

Bill No. CS for CS for SB 250

Amendment No. Barcode 892432

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
1		.	
2		.	
3		.	
4		.	
5	<hr/>		
6			
7			
8			
9			
10	<hr/>		
11	Senator Smith moved the following amendment:		
12			
13	Senate Amendment (with title amendment)		
14	On page 6, line 10, through		
15	page 7, line 12, delete those lines		
16			
17	and insert:		
18	Section 5. Subsection (1) of section 391.025, Florida		
19	Statutes, is amended to read:		
20	391.025 Applicability and scope.--		
21	(1) This act applies to health services provided to		
22	eligible individuals who are:		
23	(a) Enrolled in the Medicaid program;		
24	(b) Enrolled in the Florida Kidcare program; and		
25	(c) Uninsured or underinsured, provided that they meet		
26	the financial eligibility requirements established in this		
27	act, and to the extent that resources are appropriated for		
28	<u>their care; and-</u>		
29	<u>(d) Infants who receive an award of compensation</u>		
30	<u>pursuant to s. 766.31(1).</u>		
31	Section 6. Paragraph (f) is added to subsection (2) of		

Bill No. CS for CS for SB 250

Amendment No. ____ Barcode 892432

1 section 391.029, Florida Statutes, to read:

2 391.029 Program eligibility.--

3 (2) The following individuals are financially eligible
4 for the program:

5 (f) An infant who receives an award of compensation
6 pursuant to s. 766.31(1), provided the Florida Birth-Related
7 Neurological Injury Compensation Association shall reimburse
8 the Children's Medical Services Network the state's share of
9 funding, which funding shall be used to obtain matching
10 federal funds under Title XXI of the Social Security Act.

11

12 The department may continue to serve certain children with
13 special health care needs who are 21 years of age or older and
14 who were receiving services from the program prior to April 1,
15 1998. Such children may be served by the department until
16 July 1, 2000.

17 Section 7. Section 766.304, Florida Statutes, is
18 amended to read:

19 766.304 Administrative law judge to determine
20 claims.--The administrative law judge shall hear and determine
21 all claims filed pursuant to ss. 766.301-766.316 and shall
22 exercise the full power and authority granted to her or him in
23 chapter 120, as necessary, to carry out the purposes of such
24 sections. The administrative law judge has exclusive
25 jurisdiction to determine whether a claim filed under this act
26 is compensable. No civil action may be brought until the
27 determinations under s. 766.309 have been made by the
28 administrative law judge. If the administrative law judge
29 determines that the claimant is entitled to compensation from
30 the association or if the claimant accepts an award issued
31 pursuant to s. 766.31, no civil action may be brought or

Bill No. CS for CS for SB 250

Amendment No. ____ Barcode 892432

1 continued in violation of the exclusiveness of remedy
2 provisions of s. 766.303. If it is determined that a claim
3 filed under this act is not compensable, neither the doctrine
4 of collateral estoppel nor res judicata shall prohibit the
5 claimant from pursuing any and all civil remedies available
6 under common law and statutory law. The findings of fact and
7 conclusions of law of the administrative law judge shall not
8 be admissible in any subsequent proceeding; however, the sworn
9 testimony of any person and the exhibits introduced into
10 evidence in the administrative case are admissible as
11 impeachment in any subsequent civil action only against a
12 party to the administrative proceeding, subject to the Rules
13 of Evidence. An award action may not be awarded or paid
14 ~~brought~~ under ss. 766.301-766.316 if the claimant recovers
15 under a settlement or a final judgment is entered in a civil
16 action. The division may adopt rules to promote the efficient
17 administration of, and to minimize the cost associated with,
18 the prosecution of claims.

19 Section 8. Section 766.305, Florida Statutes, is
20 amended to read:

21 766.305 Filing of claims and responses; medical
22 disciplinary review.--

23 (1) All claims filed for compensation under the plan
24 shall commence by the claimant filing with the division a
25 petition seeking compensation. Such petition shall include
26 the following information:

27 (a) The name and address of the legal representative
28 and the basis for her or his representation of the injured
29 infant.

30 (b) The name and address of the injured infant.

31 (c) The name and address of any physician providing

Bill No. CS for CS for SB 250

Amendment No. ____ Barcode 892432

1 obstetrical services who was present at the birth and the name
2 and address of the hospital at which the birth occurred.

3 (d) A description of the disability for which the
4 claim is made.

5 (e) The time and place the injury occurred.

6 (f) A brief statement of the facts and circumstances
7 surrounding the injury and giving rise to the claim.

8 ~~(g) All available relevant medical records relating to
9 the birth-related neurological injury, and an identification
10 of any unavailable records known to the claimant and the
11 reasons for their unavailability.~~

12 ~~(h) Appropriate assessments, evaluations, and
13 prognoses, and such other records and documents as are
14 reasonably necessary for the determination of the amount of
15 compensation to be paid to, or on behalf of, the injured
16 infant on account of the birth-related neurological injury.~~

17 ~~(i) Documentation of expenses and services incurred to
18 date, which indicates any payment made for such expenses and
19 services, and by whom.~~

20 ~~(j) Documentation of any applicable private or
21 governmental source of services or reimbursement relative to
22 the impairments.~~

23 (2) The claimant shall furnish the division with as
24 many copies of the petition as required for service upon the
25 association, any physician and hospital named in the petition,
26 and the Division of Medical Quality Assurance, along with a
27 \$15 filing fee payable to the Division of Administrative
28 Hearings. Upon receipt of the petition, the division shall
29 immediately serve the association, by service upon the agent
30 designated to accept service on behalf of the association, by
31 registered or certified mail, and shall mail copies of the

Bill No. CS for CS for SB 250

Amendment No. Barcode 892432

1 petition, by registered or certified mail, to any physician,
 2 health care provider, and hospital named in the petition, and
 3 furnish a copy by regular mail to the Division of Medical
 4 Quality Assurance, and the Agency for Health Care
 5 Administration.

6 (3) The claimant shall furnish to the executive
 7 director of the Florida Birth-Related Neurological
 8 Compensation Association one copy of the following information
 9 which shall be filed with the association within 10 days after
 10 the filing of the petition as set forth in s. 766.305(1):

11 (a) All available relevant medical records relating to
 12 the birth-related neurological injury and an identification of
 13 any unavailable records known to the claimant and the reasons
 14 for their unavailability.

15 (b) Appropriate assessments, evaluations, and
 16 prognoses and such other records and documents as are
 17 reasonably necessary for the determination of the amount of
 18 compensation to be paid to, or on behalf of, the injured
 19 infant on account of the birth-related neurological injury.

20 (c) Documentation of expenses and services incurred to
 21 date, which indicates any payment made for such expenses and
 22 services and by whom.

23 (d) Documentation of any applicable private or
 24 governmental source of services or reimbursement relative to
 25 the impairments.

26
 27 The information contained in paragraphs (a)-(d) is
 28 confidential and exempt pursuant to the provisions of s.
 29 766.315(5)(b).

30 ~~(4)~~(3) The association shall have 45 days from the
 31 date of service of a complete claim, filed pursuant to

Bill No. CS for CS for SB 250

Amendment No. ____ Barcode 892432

1 subsections (1) and (2), in which to file a response to the
2 petition and to submit relevant written information relating
3 to the issue of whether the injury alleged is a birth-related
4 neurological injury.

5 ~~(5)(4)~~ Upon receipt of such petition, the Division of
6 Medical Quality Assurance shall review the information therein
7 and determine whether it involved conduct by a physician
8 licensed under chapter 458 or an osteopathic physician
9 licensed under chapter 459 that is subject to disciplinary
10 action, in which case the provisions of s. 456.073 shall
11 apply.

12 ~~(6)(5)~~ Upon receipt of such petition, the Agency for
13 Health Care Administration shall investigate the claim, and if
14 it determines that the injury resulted from, or was aggravated
15 by, a breach of duty on the part of a hospital in violation of
16 chapter 395, it shall take any such action consistent with its
17 disciplinary authority as may be appropriate.

18 ~~(7)(6)~~ Any claim which the association determines to
19 be compensable may be accepted for compensation, provided that
20 the acceptance is approved by the administrative law judge to
21 whom the claim for compensation is assigned.

22 Section 9. Subsection (4) is added to section 766.309,
23 Florida Statutes, to read:

24 766.309 Determination of claims; presumption; findings
25 of administrative law judge binding on participants.--

26 (4) If it is in the interest of judicial economy or if
27 requested to by the claimant, the administrative law judge may
28 bifurcate the proceeding, addressing compensability and notice
29 pursuant to s. 766.316 first and addressing any award pursuant
30 to s. 766.31 in a separate proceeding. The administrative law
31 judge may issue a final order on compensability and notice

Bill No. CS for CS for SB 250

Amendment No. ____ Barcode 892432

1 which is subject to appeal under s. 766.311, prior to issuance
2 of award pursuant to s. 766.31.

3 Section 10. Subsection (1) of section 766.31, Florida
4 Statutes, is amended to read:

5 766.31 Administrative law judge awards for
6 birth-related neurological injuries; notice of award.--

7 (1) Upon determining that an infant has sustained a
8 birth-related neurological injury and that obstetrical
9 services were delivered by a participating physician at the
10 birth, the administrative law judge shall make an award
11 providing compensation for the following items relative to
12 such injury:

13 (a) Actual expenses for medically necessary and
14 reasonable medical and hospital, habilitative and training,
15 family residential or custodial care, professional
16 residential, and custodial care and service, for medically
17 necessary drugs, special equipment, and facilities, and for
18 related travel. However, such expenses shall not include:

19 1. Expenses for items or services that the infant has
20 received, or is entitled to receive, under the laws of any
21 state or the Federal Government, including Medicaid, except to
22 the extent such exclusion may be prohibited by federal law.

23 2. Expenses for items or services that the infant has
24 received, or is contractually entitled to receive, from any
25 prepaid health plan, health maintenance organization, or other
26 private insuring entity.

27 3. Expenses for which the infant has received
28 reimbursement, or for which the infant is entitled to receive
29 reimbursement, under the laws of any state or the Federal
30 Government, including Medicaid, except to the extent such
31 exclusion may be prohibited by federal law.

Bill No. CS for CS for SB 250

Amendment No. ____ Barcode 892432

1 4. Expenses for which the infant has received
2 reimbursement, or for which the infant is contractually
3 entitled to receive reimbursement, pursuant to the provisions
4 of any health or sickness insurance policy or other private
5 insurance program.

6
7 Expenses included under this paragraph shall be limited to
8 reasonable charges prevailing in the same community for
9 similar treatment of injured persons when such treatment is
10 paid for by the injured person.

11 (b)1. Periodic payments of an award to the parents or
12 legal guardians of the infant found to have sustained a
13 birth-related neurological injury, which award shall not
14 exceed \$100,000. However, at the discretion of the
15 administrative law judge, such award may be made in a lump
16 sum.

17 2. A death benefit for the infant in an amount of
18 \$10,000 ~~Payment for funeral expenses not to exceed \$1,500.~~

19 (c) Reasonable expenses incurred in connection with
20 the filing of a claim under ss. 766.301-766.316, including
21 reasonable attorney's fees, which shall be subject to the
22 approval and award of the administrative law judge. In
23 determining an award for attorney's fees, the administrative
24 law judge shall consider the following factors:

25 1. The time and labor required, the novelty and
26 difficulty of the questions involved, and the skill requisite
27 to perform the legal services properly.

28 2. The fee customarily charged in the locality for
29 similar legal services.

30 3. The time limitations imposed by the claimant or the
31 circumstances.

Bill No. CS for CS for SB 250

Amendment No. ____ Barcode 892432

1 4. The nature and length of the professional
2 relationship with the claimant.

3 5. The experience, reputation, and ability of the
4 lawyer or lawyers performing services.

5 6. The contingency or certainty of a fee.

6

7 The claimants shall not be liable for any attorney's fees
8 incurred in connection with the filing of a claim under ss.
9 766.301-766.316 other than those fees awarded under this
10 section.

11 Section 11. Subsection (4) of section 766.314, Florida
12 Statutes, is amended to read:

13 766.314 Assessments; plan of operation.--

14 (4) The following persons and entities shall pay into
15 the association an initial assessment in accordance with the
16 plan of operation:

17 (a) On or before October 1, 1988, each hospital
18 licensed under chapter 395 shall pay an initial assessment of
19 \$50 per infant delivered in the hospital during the prior
20 calendar year, as reported to the Agency for Health Care
21 Administration; provided, however, that a hospital owned or
22 operated by the state or a county, special taxing district, or
23 other political subdivision of the state shall not be required
24 to pay the initial assessment or any assessment required by
25 subsection (5). The term "infant delivered" includes live
26 births and not stillbirths, but the term does not include
27 infants delivered by employees or agents of the board of
28 trustees, Regents or those born in a teaching hospital as
29 defined in s. 408.07, or those born in a teaching hospital as
30 defined in s. 395.806 that have been deemed by the association
31 as being exempt from assessments since fiscal year 1997 to

Bill No. CS for CS for SB 250

Amendment No. ____ Barcode 892432

1 fiscal year 2001. The initial assessment and any assessment
2 imposed pursuant to subsection (5) may not include any infant
3 born to a charity patient (as defined by rule of the Agency
4 for Health Care Administration) or born to a patient for whom
5 the hospital receives Medicaid reimbursement, if the sum of
6 the annual charges for charity patients plus the annual
7 Medicaid contractuals of the hospital exceeds 10 percent of
8 the total annual gross operating revenues of the hospital.
9 The hospital is responsible for documenting, to the
10 satisfaction of the association, the exclusion of any birth
11 from the computation of the assessment. Upon demonstration of
12 financial need by a hospital, the association may provide for
13 installment payments of assessments.

14 (b)1. On or before October 15, 1988, all physicians
15 licensed pursuant to chapter 458 or chapter 459 as of October
16 1, 1988, other than participating physicians, shall be
17 assessed an initial assessment of \$250, which must be paid no
18 later than December 1, 1988.

19 2. Any such physician who becomes licensed after
20 September 30, 1988, and before January 1, 1989, shall pay into
21 the association an initial assessment of \$250 upon licensure.

22 3. Any such physician who becomes licensed on or after
23 January 1, 1989, shall pay an initial assessment equal to the
24 most recent assessment made pursuant to this paragraph,
25 paragraph (5)(a), or paragraph (7)(b).

26 4. However, if the physician is a physician specified
27 in this subparagraph, the assessment is not applicable:

28 a. A resident physician, assistant resident physician,
29 or intern in an approved postgraduate training program, as
30 defined by the Board of Medicine or the Board of Osteopathic
31 Medicine by rule;

Bill No. CS for CS for SB 250

Amendment No. ____ Barcode 892432

1 b. A retired physician who has withdrawn from the
 2 practice of medicine but who maintains an active license as
 3 evidenced by an affidavit filed with the Department of Health.
 4 Prior to reentering the practice of medicine in this state, a
 5 retired physician as herein defined must notify the Board of
 6 Medicine or the Board of Osteopathic Medicine and pay the
 7 appropriate assessments pursuant to this section;

8 c. A physician who holds a limited license pursuant to
 9 s. 458.317 and who is not being compensated for medical
 10 services;

11 d. A physician who is employed full time by the United
 12 States Department of Veterans Affairs and whose practice is
 13 confined to United States Department of Veterans Affairs
 14 hospitals; or

15 e. A physician who is a member of the Armed Forces of
 16 the United States and who meets the requirements of s.
 17 456.024.

18 f. A physician who is employed full time by the State
 19 of Florida and whose practice is confined to state-owned
 20 correctional institutions, a county health department, or
 21 state-owned mental health or developmental services
 22 facilities, or who is employed full time by the Department of
 23 Health.

24 (c) On or before December 1 of each year, beginning
 25 January 1, 2003 ~~1988~~, each physician licensed pursuant to
 26 chapter 458 or chapter 459 who wishes to participate in the
 27 Florida Birth-Related Neurological Injury Compensation Plan
 28 and who otherwise qualifies as a participating physician under
 29 ss. 766.301-766.316 shall pay an initial assessment of \$5,000.
 30 A physician shall be a participating physician for the entire
 31 calendar year if such assessment is paid on or before January

Bill No. CS for CS for SB 250

Amendment No. ____ Barcode 892432

1 31. However, if the physician is either a resident physician,
2 assistant resident physician, or intern in an approved
3 postgraduate training program, as defined by the Board of
4 Medicine or the Board of Osteopathic Medicine by rule, and is
5 supervised in accordance with program requirements established
6 by the Accreditation Council for Graduate Medical Education or
7 the American Osteopathic Association by a physician who is
8 participating in the plan, such resident physician, assistant
9 resident physician, or intern is deemed to be a participating
10 physician without the payment of the assessment.

11 Participating physicians also include any employee of the
12 board of ~~trustees~~ ~~Regents~~ who has paid the assessment required
13 by this paragraph and paragraph (5)(a), and any certified
14 nurse midwife supervised by such employee. Participating
15 physicians include any certified nurse midwife who has paid 50
16 percent of the physician assessment required by this paragraph
17 and paragraph (5)(a) and who is supervised by a participating
18 physician who has paid the assessment required by this
19 paragraph and paragraph (5)(a). Supervision for nurse midwives
20 shall require that the supervising physician will be easily
21 available and have a prearranged plan of treatment for
22 specified patient problems which the supervised certified
23 nurse midwife may carry out in the absence of any complicating
24 features. Any physician who elects to participate in such
25 plan on or after January 1, 1989, who was not a participating
26 physician at the time of such election to participate and who
27 otherwise qualifies as a participating physician under ss.
28 766.301-766.316 shall pay an additional initial assessment
29 equal to the most recent assessment made pursuant to this
30 paragraph, paragraph (5)(a), or paragraph (7)(b).

31 (d) Any hospital located in any county with a gross

Bill No. CS for CS for SB 250

Amendment No. ____ Barcode 892432

1 population in excess of 1.1 million as of January 1, 2003, as
2 determined by the Agency for Health Care Administration,
3 pursuant to the Health Care Responsibility Act, may elect to
4 pay the fee for the participating physician and the certified
5 nurse midwife if the hospital first determines that the
6 primary motivating purpose for making such payment is to
7 ensure coverage for the hospital's patients under the
8 provisions of ss. 766.301-766.316, provided no hospital may
9 restrict any participating physician or nurse midwife,
10 directly or indirectly, from being on the staff of hospitals
11 other than the staff of the hospital making such payment. Each
12 hospital shall file with the association an affidavit setting
13 forth specifically the reasons why such hospital elected to
14 make such payment on behalf of each participating physician
15 and certified nurse midwife. The payments authorized pursuant
16 to this paragraph shall be in addition to the assessment set
17 forth in paragraph (5)(a).

18
19 (Redesignate subsequent sections.)

20
21
22 ===== T I T L E A M E N D M E N T =====

23 And the title is amended as follows:

24 On page 1, line 21, after the semicolon,
25
26 insert:
27 amending s. 391.025, F.S.; including certain
28 infants as eligible individuals for certain
29 health services; amending s. 391.029, F.S.;

30 providing for financial eligibility under the
31 Children's Medical Services program for certain

Bill No. CS for CS for SB 250

Amendment No. ____ Barcode 892432

1 infants; providing certain reimbursement and
2 funding requirements; amending s. 766.304,
3 F.S.; providing additional limitations on
4 certain civil actions; limiting certain awards
5 under certain circumstances; amending s.
6 766.305, F.S.; deleting certain information
7 required in a petition; revising certain
8 copying requirements; specifying information
9 required to be provided by a claimant;
10 specifying confidentiality of certain
11 information; amending s. 766.309, F.S.;
12 providing for bifurcating certain proceedings
13 under certain circumstances; providing
14 procedures; providing authority to an
15 administrative law judge for certain actions;
16 amending s. 766.31, F.S., relating to
17 administrative law judge awards for
18 birth-related neurological injuries; excluding
19 expenses for items or services received under
20 Medicaid; revising the amount of the death
21 benefit; limiting claimants' liability to
22 expenses awarded under this section; amending
23 s. 766.314, F.S.; redefining the term "infant
24 delivered" to exclude those delivered by
25 employees or agents of the board of trustees or
26 in certain hospitals; revising qualifications
27 for physician participation in the Florida
28 Birth-related Neurological Injury Compensation
29 Plan; providing for certain hospitals to pay
30 the fee for participation in the plan on behalf
31 of a participating physician or certified nurse

Bill No. CS for CS for SB 250

Amendment No. ____ Barcode 892432

1 midwife; providing restrictions on such a
2 hospital; requiring the hospital to file
3 certain information;

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31