

Bill No. CS for CS for SB 2738

Amendment No. Barcode 055848

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Jones moved the following amendment:		
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13	Senate Amendment (with title amendment)		
14	On page 79, between lines 17 and 18,		
15			
16	insert:		
17	Section 58. Subsection (1) of section 391.025, Florida		
18	Statutes, is amended to read:		
19	391.025 Applicability and scope.--		
20	(1) This act applies to health services provided to		
21	eligible individuals who are:		
22	(a) Enrolled in the Medicaid program;		
23	(b) Enrolled in the Florida Kidcare program; and		
24	(c) Uninsured or underinsured, provided that they meet		
25	the financial eligibility requirements established in this		
26	act, and to the extent that resources are appropriated for		
27	their care; and		
28	<u>(d) Infants who receive an award of compensation</u>		
29	<u>pursuant to s. 766.31(1).</u>		
30	Section 59. Paragraph (f) is added to subsection (2)		
31	of section 391.029, Florida Statutes, to read:		

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1 391.029 Program eligibility.--

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

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

10

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

16 Section 60. Section 766.304, Florida Statutes, is
17 amended to read:

18 766.304 Administrative law judge to determine
19 claims.--The administrative law judge shall hear and determine
20 all claims filed pursuant to ss. 766.301-766.316 and shall
21 exercise the full power and authority granted to her or him in
22 chapter 120, as necessary, to carry out the purposes of such
23 sections. The administrative law judge has exclusive
24 jurisdiction to determine whether a claim filed under this act
25 is compensable. No civil action may be brought until the
26 determinations under s. 766.309 have been made by the
27 administrative law judge. If the administrative law judge
28 determines that the claimant is entitled to compensation from
29 the association, no civil action may be brought or continued
30 in violation of the exclusiveness of remedy provisions of s.
31 766.303. If it is determined that a claim filed under this act

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

17 Section 61. Section 766.305, Florida Statutes, is
 18 amended to read:

19 766.305 Filing of claims and responses; medical
 20 disciplinary review.--

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

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

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

29 (c) The name and address of any physician providing
 30 obstetrical services who was present at the birth and the name
 31 and address of the hospital at which the birth occurred.

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1 (d) A description of the disability for which the
2 claim is made.

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

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

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

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

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

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

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

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1 furnish a copy by regular mail to the Division of Medical
2 Quality Assurance, and the Agency for Health Care
3 Administration.

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

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

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

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

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

24
25 The information contained in paragraphs (a)-(d) is
26 confidential and exempt pursuant to the provisions of s.
27 766.315(5)(b).

28 ~~(4)~~(3) The association shall have 45 days from the
29 date of service of a complete claim, filed pursuant to
30 subsections (1) and (2), in which to file a response to the
31 petition and to submit relevant written information relating

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1 to the issue of whether the injury alleged is a birth-related
2 neurological injury.

3 ~~(5)(4)~~ Upon receipt of such petition, the Division of
4 Medical Quality Assurance shall review the information therein
5 and determine whether it involved conduct by a physician
6 licensed under chapter 458 or an osteopathic physician
7 licensed under chapter 459 that is subject to disciplinary
8 action, in which case the provisions of s. 456.073 shall
9 apply.

10 ~~(6)(5)~~ Upon receipt of such petition, the Agency for
11 Health Care Administration shall investigate the claim, and if
12 it determines that the injury resulted from, or was aggravated
13 by, a breach of duty on the part of a hospital in violation of
14 chapter 395, it shall take any such action consistent with its
15 disciplinary authority as may be appropriate.

16 ~~(7)(6)~~ Any claim which the association determines to
17 be compensable may be accepted for compensation, provided that
18 the acceptance is approved by the administrative law judge to
19 whom the claim for compensation is assigned.

20 Section 62. Subsection (4) is added to section
21 766.309, Florida Statutes, to read:

22 766.309 Determination of claims; presumption; findings
23 of administrative law judge binding on participants.--

24 (4) If it is in the interest of judicial economy or if
25 requested to by the claimant, the administrative law judge may
26 bifurcate the proceeding, addressing compensability and notice
27 pursuant to s. 766.316 first and addressing any award pursuant
28 to s. 766.31 in a separate proceeding. The administrative law
29 judge may issue a final order on compensability and notice
30 which is subject to appeal under s. 766.311, prior to issuance
31 of award pursuant to s. 766.31.

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1 Section 63. Subsection (1) of section 766.31, Florida
2 Statutes, is amended to read:

3 766.31 Administrative law judge awards for
4 birth-related neurological injuries; notice of award.--

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

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

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

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

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

30 4. Expenses for which the infant has received
31 reimbursement, or for which the infant is contractually

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1 entitled to receive reimbursement, pursuant to the provisions
2 of any health or sickness insurance policy or other private
3 insurance program.

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

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

15 2. A death benefit for the infant in an amount of
16 ~~\$10,000 Payment for funeral expenses not to exceed \$1,500.~~

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

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

26 2. The fee customarily charged in the locality for
27 similar legal services.

28 3. The time limitations imposed by the claimant or the
29 circumstances.

30 4. The nature and length of the professional
31 relationship with the claimant.

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1 5. The experience, reputation, and ability of the
2 lawyer or lawyers performing services.

3 6. The contingency or certainty of a fee.
4

5 If there is an award of benefits under the plan, the claimants
6 shall not be liable for any attorney's fees incurred in
7 connection with the filing of a claim under ss.
8 766.301-766.316 other than those fees awarded under this
9 section.

10 Section 64. Subsection (4) of section 766.314, Florida
11 Statutes, is amended to read:

12 766.314 Assessments; plan of operation.--

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

16 (a) On or before October 1, 1988, each hospital
17 licensed under chapter 395 shall pay an initial assessment of
18 \$50 per infant delivered in the hospital during the prior
19 calendar year, as reported to the Agency for Health Care
20 Administration; provided, however, that a hospital owned or
21 operated by the state or a county, special taxing district, or
22 other political subdivision of the state shall not be required
23 to pay the initial assessment or any assessment required by
24 subsection (5). The term "infant delivered" includes live
25 births and not stillbirths, but the term does not include
26 infants delivered by employees or agents of the board of
27 trustees, Regents or those born in a teaching hospital as
28 defined in s. 408.07, or those born in a family practice
29 teaching hospital as defined in s. 395.806 that have been
30 deemed by the association as being exempt from assessments
31 since fiscal year 1997 to fiscal year 2001. The initial

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

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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

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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

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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 39ke 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 6, line 22, 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

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

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1 hospital; requiring the hospital to file
2 certain information;
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