

Bill No. CS for CS for SB 696

Amendment No.      Barcode 545150

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Jones moved the following amendment:		
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13	<b>Senate Amendment (with title amendment)</b>		
14	On page 3, between lines 15 and 16,		
15			
16	insert:		
17	Section 2. 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; <del>and</del>		
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; <del>and</del>		
28	<u>(d) Infants who receive an award of compensation</u>		
29	<u>pursuant to s. 766.31(1).</u>		
30	Section 3. Paragraph (f) is added to subsection (2) of		
31	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 4. 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 5. 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 6. Subsection (4) is added to section 766.309,  
21 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 do so by the claimant, the administrative law  
26 judge may bifurcate the proceeding, addressing compensability  
27 and notice pursuant to s. 766.316 first and addressing any  
28 award pursuant to s. 766.31 in a separate proceeding. The  
29 administrative law judge may issue a final order on  
30 compensability and notice which is subject to appeal under s.  
31 766.311, prior to issuance of award pursuant to s. 766.31.

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1 Section 7. 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.

4

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 8. 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 which 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 plan  
25 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           Delete everything before the enacting clause

25  
 26 and insert:

27                           A bill to be entitled

28           An act relating to health care; creating s.

29           154.317, F.S.; establishing reimbursement

30           procedures and guidelines for the reimbursement

31           of trauma centers by counties; providing for

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1 the payment and use of certain funds; amending  
2 s. 391.025, F.S.; including certain infants as  
3 eligible individuals for certain health  
4 services; amending s. 391.029, F.S.; providing  
5 for financial eligibility under the Children's  
6 Medical Services program for certain infants;  
7 providing certain reimbursement and funding  
8 requirements; amending s. 766.304, F.S.;  
9 limiting certain awards under certain  
10 circumstances; amending s. 766.305, F.S.;  
11 deleting certain information required in a  
12 petition; revising certain copying  
13 requirements; specifying information required  
14 to be provided by a claimant; specifying  
15 confidentiality of certain information;  
16 amending s. 766.309, F.S.; providing for  
17 bifurcating certain proceedings under certain  
18 circumstances; providing procedures; providing  
19 authority to an administrative law judge for  
20 certain actions; amending s. 766.31, F.S.,  
21 relating to administrative law judge awards for  
22 birth-related neurological injuries; excluding  
23 expenses for items or services received under  
24 Medicaid; revising the amount of the death  
25 benefit; limiting claimants' liability, in  
26 specified circumstances, to expenses awarded  
27 under this section; amending s. 766.314, F.S.;  
28 redefining the term "infant delivered" to  
29 exclude those delivered by employees or agents  
30 of the board of trustees or in certain  
31 hospitals; revising qualifications for

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1           physician participation in the Florida  
2           Birth-related Neurological Injury Compensation  
3           Plan; providing for certain hospitals to pay  
4           the fee for participation in the plan on behalf  
5           of a participating physician or certified nurse  
6           midwife; providing restrictions on such a  
7           hospital; requiring the hospital to file  
8           certain information; providing an effective  
9           date.

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