

1 A bill to be entitled
2 An act relating to the Florida Birth-Related
3 Neurological Injury Compensation Plan; amending s.
4 11.45, F.S.; requiring the Auditor General to audit
5 the Florida Birth-Related Neurological Injury
6 Compensation Association every 3 years; providing
7 requirements for such audit; amending s. 766.303,
8 F.S.; requiring that the association administer the
9 Florida Birth-Related Neurological Injury Compensation
10 Plan in a manner that promotes and protects the health
11 and best interests of children with birth-related
12 neurological injuries; amending s. 766.31, F.S.;
13 authorizing parents or legal guardians receiving
14 benefits under the plan to file a petition with the
15 Division of Administrative Hearings to dispute the
16 denial or amount of reimbursement of actual expenses;
17 increasing the amount that may be awarded to the
18 parents or legal guardians of an infant found to have
19 sustained a birth-related neurological injury;
20 requiring that such amount be increased annually;
21 increasing the death benefit for an infant found to
22 have sustained a birth-related neurological injury;
23 amending s. 766.315, F.S.; revising the membership of
24 the board of directors of the association; providing a
25 term limit for directors; revising the process for

26 recommending new directors; authorizing removal of a
 27 director from office for specified reasons; revising
 28 the powers of the directors; providing that meetings
 29 of the board of directors are subject to the public
 30 meetings and records law; specifying notice and agenda
 31 requirements for board meetings; requiring the
 32 association to furnish a list of compensable expenses
 33 to parents receiving benefits; requiring the
 34 association to publish a report on its website by a
 35 specified date annually; providing requirements for
 36 such report; providing for retroactive application;
 37 requiring the Agency for Health Care Administration to
 38 conduct a review and develop policies and procedures
 39 regarding Medicaid third-party benefits payable by and
 40 recoverable from the Florida Birth-Related
 41 Neurological Injury Compensation Plan; providing an
 42 effective date.

43
 44 Be It Enacted by the Legislature of the State of Florida:

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 46 Section 1. Paragraph (n) is added to subsection (2) of
 47 section 11.45, Florida Statutes, to read:

48 11.45 Definitions; duties; authorities; reports; rules.—

49 (2) DUTIES.—The Auditor General shall:

50 (n) Once every 3 years, conduct an operational and

51 financial audit of the Florida Birth-Related Neurological Injury
 52 Compensation Association. Each operational audit shall include,
 53 at a minimum, an assessment of compliance with ss. 766.303-
 54 766.315, and compliance with the public records and public
 55 meetings laws of this state.

56
 57 The Auditor General shall perform his or her duties
 58 independently but under the general policies established by the
 59 Legislative Auditing Committee. This subsection does not limit
 60 the Auditor General's discretionary authority to conduct other
 61 audits or engagements of governmental entities as authorized in
 62 subsection (3).

63 Section 2. Subsection (4) is added to section 766.303,
 64 Florida Statutes, to read:

65 766.303 Florida Birth-Related Neurological Injury
 66 Compensation Plan; exclusiveness of remedy.—

67 (4) The association shall administer the plan in a manner
 68 that promotes and protects the health and best interests of
 69 children with birth-related neurological injuries.

70 Section 3. Paragraphs (a) and (b) of subsection (1) of
 71 section 766.31, Florida Statutes, are amended to read:

72 766.31 Administrative law judge awards for birth-related
 73 neurological injuries; notice of award.—

74 (1) Upon determining that an infant has sustained a birth-
 75 related neurological injury and that obstetrical services were

76 delivered by a participating physician at the birth, the
77 administrative law judge shall make an award providing
78 compensation for the following items relative to such injury:

79 (a) Actual expenses for medically necessary and reasonable
80 medical and hospital, habilitative and training, family
81 residential or custodial care, professional residential, and
82 custodial care and service, for medically necessary drugs,
83 special equipment, and facilities, and for related travel.

84 However, such expenses shall not include:

85 1. Expenses for items or services that the infant has
86 received, or is entitled to receive, under the laws of any state
87 or the Federal Government, except to the extent such exclusion
88 may be prohibited by federal law.

89 2. Expenses for items or services that the infant has
90 received, or is contractually entitled to receive, from any
91 prepaid health plan, health maintenance organization, or other
92 private insuring entity.

93 3. Expenses for which the infant has received
94 reimbursement, or for which the infant is entitled to receive
95 reimbursement, under the laws of any state or the Federal
96 Government, except to the extent such exclusion may be
97 prohibited by federal law.

98 4. Expenses for which the infant has received
99 reimbursement, or for which the infant is contractually entitled
100 to receive reimbursement, pursuant to the provisions of any

101 health or sickness insurance policy or other private insurance
102 program.

103

104 Expenses included under this paragraph shall be limited to
105 reasonable charges prevailing in the same community for similar
106 treatment of injured persons when such treatment is paid for by
107 the injured person. The parents or legal guardians receiving
108 benefits under the plan may file a petition with the Division of
109 Administrative Hearings to dispute the amount of actual expenses
110 reimbursed or the denial of reimbursement.

111 (b)1. Periodic payments of an award to the parents or
112 legal guardians of the infant found to have sustained a birth-
113 related neurological injury, which award may ~~shall~~ not exceed
114 \$100,000. However, at the discretion of the administrative law
115 judge, such award may be made in a lump sum. Beginning on
116 January 1, 2021, the award may not exceed \$250,000 and each
117 January 1 thereafter, the award authorized under this paragraph
118 shall increase by 3 percent.

119 2. Death benefit for the infant in an amount of \$50,000
120 ~~\$10,000~~.

121 Section 4. Section 766.315, Florida Statutes, is amended
122 to read:

123 766.315 Florida Birth-Related Neurological Injury
124 Compensation Association; board of directors; notice of
125 meetings; report.-

126 (1) (a) The Florida Birth-Related Neurological Injury
 127 Compensation Plan shall be governed by a board of seven ~~five~~
 128 directors which shall be known as the Florida Birth-Related
 129 Neurological Injury Compensation Association. The association is
 130 not a state agency, board, or commission. Notwithstanding the
 131 provision of s. 15.03, the association is authorized to use the
 132 state seal.

133 (b) The directors shall be appointed for staggered terms
 134 of 3 years or until their successors are appointed and have
 135 qualified; however, a director may not serve for more than 6
 136 consecutive years.

137 (c) The directors shall be appointed by the Chief
 138 Financial Officer as follows:

- 139 1. One citizen representative who is not affiliated with
 140 any of the groups identified in subparagraphs 2.-6.
- 141 2. One representative of participating physicians.
- 142 3. One representative of hospitals.
- 143 4. One representative of casualty insurers.
- 144 5. One representative of physicians other than
 145 participating physicians.
- 146 6. Two parents or legal guardians of children, living or
 147 deceased, who are or were beneficiaries of the plan.

148 (2) (a) The Chief Financial Officer may select the
 149 representative of the participating physicians from a list of at
 150 least three names recommended by the American Congress of

151 Obstetricians and Gynecologists, District XII; the
152 representative of hospitals from a list of at least three names
153 recommended by the Florida Hospital Association; the
154 representative of casualty insurers from a list of at least
155 three names, one of which is recommended by the American
156 Insurance Association, one of which is recommended by the
157 Florida Insurance Council, and one of which is recommended by
158 the Property Casualty Insurers Association of America; and the
159 representative of physicians, other than participating
160 physicians, from a list of three names recommended by the
161 Florida Medical Association and a list of three names
162 recommended by the Florida Osteopathic Medical Association.
163 However, the Chief Financial Officer is not required to make an
164 appointment from among the nominees of the respective
165 associations.

166 (b) If applicable, the Chief Financial Officer shall
167 promptly notify the appropriate ~~medical~~ association or person
168 identified in paragraph (a) to make recommendations upon the
169 occurrence of any vacancy, and like nominations may be made for
170 the filling of the vacancy.

171 (c) The Governor or the Chief Financial Officer may remove
172 a director from office for misconduct, malfeasance, misfeasance,
173 or neglect of duty in office. Any vacancy so created shall be
174 filled as provided in paragraph (a).

175 (3) The directors may ~~shall~~ not transact any business or

176 exercise any power of the plan except upon the affirmative vote
177 of four ~~three~~ directors. The directors shall serve without
178 salary, but are entitled to receive reimbursement ~~each director~~
179 ~~shall be reimbursed~~ for actual and necessary expenses incurred
180 in the performance of his or her official duties as a director
181 of the plan in accordance with s. 112.061. The directors are
182 ~~shall not be~~ subject to any liability with respect to the
183 administration of the plan.

184 (4) The board of directors has ~~shall have~~ the power to:

185 (a) Administer the plan.

186 (b) Administer the funds collected on behalf of the plan.

187 (c) Administer the payment of claims on behalf of the
188 plan.

189 (d) Direct the investment and reinvestment of any surplus
190 funds over losses and expenses, if ~~provided that~~ any investment
191 income generated thereby remains credited to the plan.

192 (e) Reinsure the risks of the plan in whole or in part.

193 (f) Sue and be sued, and appear and defend, in all actions
194 and proceedings in its name to the same extent as a natural
195 person.

196 (g) Have and exercise all powers necessary or convenient
197 to effect any or all of the purposes for which the plan is
198 created.

199 (h) Enter into such contracts as are necessary or proper
200 to administer the plan.

201 (i) Employ or retain such persons as are necessary to
202 perform the administrative and financial transactions and
203 responsibilities of the plan and to perform other necessary and
204 proper functions not prohibited by law.

205 (j) Take such legal action as may be necessary to avoid
206 payment of improper claims.

207 (k) Indemnify any employee, agent, member of the board of
208 directors or alternate thereof, or person acting on behalf of
209 the plan in an official capacity, for expenses, including
210 attorney ~~attorney's~~ fees, judgments, fines, and amounts paid in
211 settlement actually and reasonably incurred in connection with
212 any action, suit, or proceeding, including any appeal thereof,
213 arising out of such person's capacity to act ~~acting~~ on behalf of
214 the plan, ~~if, provided that~~ such person acted in good faith and
215 in a manner he or she reasonably believed to be in, or not
216 opposed to, the best interests of the plan and the health and
217 best interest of the child having birth-related neurological
218 injuries, and if ~~provided that~~, with respect to any criminal
219 action or proceeding, such ~~the~~ person had reasonable cause to
220 believe his or her conduct was lawful.

221 (5) (a) Money may be withdrawn on account of the plan only
222 upon a voucher as authorized by the association.

223 (b) All meetings of the board of directors are subject to
224 the requirements of s. 286.011, and all books, records, and
225 audits of the plan are open to the public for reasonable

226 inspection ~~to the general public~~, except that a claim file in
227 the possession of the association or its representative is
228 confidential and exempt from the provisions of s. 119.07(1) and
229 s. 24(a), Art. I of the State Constitution until termination of
230 litigation or settlement of the claim, although medical records
231 and other portions of the claim file may remain confidential and
232 exempt as otherwise provided by law. Any book, record, document,
233 audit, or asset acquired by, prepared for, or paid for by the
234 association is subject to the authority of the board of
235 directors, which is responsible therefor.

236 (c) Except in the case of emergency meetings, the
237 association shall give notice of any board meeting by
238 publication on the association's website not fewer than 7 days
239 before the meeting. The association shall prepare an agenda in
240 time to ensure that a copy of the agenda may be received at
241 least 7 days before the meeting by any person who requests a
242 copy and who pays the reasonable cost of the copy. The agenda,
243 along with any meeting materials available in electronic form,
244 excluding confidential and exempt information, shall be
245 published on the association's website. The agenda shall contain
246 the items to be considered in order of presentation and a
247 telephone number for members of the public to participate
248 telephonically at the board meeting. After the agenda has been
249 made available, a change shall be made only for good cause, as
250 determined by the person designated to preside, and must be

251 stated in the record. Notification of such change shall be at
252 the earliest practicable time.

253 (d) Each person authorized to receive deposits, issue
254 vouchers, or withdraw or otherwise disburse any funds shall post
255 a blanket fidelity bond in an amount reasonably sufficient to
256 protect plan assets, as determined by the plan of operation. The
257 cost of such bond will be paid from the assets of the plan.

258 (e)~~(d)~~ Annually, the association shall furnish audited
259 financial reports to any plan participant upon request, to the
260 Office of Insurance Regulation of the Financial Services
261 Commission, and to the Joint Legislative Auditing Committee. The
262 reports must be prepared in accordance with accepted accounting
263 procedures and must include such information as may be required
264 by the Office of Insurance Regulation or the Joint Legislative
265 Auditing Committee. At any time determined to be necessary, the
266 Office of Insurance Regulation or the Joint Legislative Auditing
267 Committee may conduct an audit of the plan.

268 (f)~~(e)~~ Funds held on behalf of the plan are funds of the
269 State of Florida. The association may only invest plan funds in
270 the investments and securities described in s. 215.47, and shall
271 be subject to the limitations on investments contained in that
272 section. All income derived from such investments will be
273 credited to the plan. The State Board of Administration may
274 invest and reinvest funds held on behalf of the plan in
275 accordance with the trust agreement approved by the association

276 and the State Board of Administration and within the provisions
277 of ss. 215.44-215.53.

278 (6) The association shall furnish annually to each parent
279 and legal guardian receiving benefits under the plan either by
280 mail or electronically a list of expenses compensable under the
281 plan.

282 (7) The association shall publish a report on its website
283 by January 1, 2022, and every January 1 thereafter. The report
284 shall include:

285 (a) The names and terms of each board member and executive
286 staff member.

287 (b) The amount of compensation paid to each association
288 employee.

289 (c) A summary of reimbursement disputes and resolutions.

290 (d) A list of expenditures for attorney fees and lobbying
291 fees.

292 (e) Other expenses to oppose each plan claim. Any personal
293 identifying information of the parent, legal guardian, or child
294 involved in the claim must be removed from this list.

295 Section 5. The amendments made to s. 766.31, Florida
296 Statutes, by this act, apply to petitions pending or filed under
297 s. 766.305, Florida Statutes, on or after January 1, 2021.

298 Section 6. The Agency for Health Care Administration must
299 review its Medicaid third-party liability functions and rights
300 under s. 409.910, Florida Statutes, relative to the Florida

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301 Birth-Related Neurological Injury Compensation Plan established
302 under s. 766.303, Florida Statutes, and must include in its
303 review the extent and value of the liabilities owed by the plan
304 as a third-party benefit provider. The agency shall develop
305 policies and procedures to ensure robust implementation of
306 agency functions and rights relative to the primacy of the
307 plan's third-party benefits payable under s. 766.31(1)(a)1. and
308 3., Florida Statutes, and recoveries due the agency under s.
309 409.910, Florida Statutes.

310 Section 7. This act shall take effect July 1, 2021.