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LEGISLATIVE ACTION

Senate	.	House
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Floor: 1/AD/RM	.	Floor: C
04/29/2021 12:07 PM	.	04/29/2021 07:09 PM
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Senator Burgess moved the following:

Senate Amendment to House Amendment (401309) (with title amendment)

Delete lines 44 - 349

and insert:

At a minimum, compensation must be provided for the following actual expenses:

1. A total annual benefit of up to $10,000 for immediate family members who reside with the infant for psychotherapeutic services obtained from providers licensed under chapter 490 or chapter 491.

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2. For the life of the child, 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 mode of transportation must take into account the special accommodations required for the specific child. The plan may not limit such transportation assistance based on the child's age or weight. The plan must replace any vans purchased by the plan every 7 years or 150,000 miles, whichever comes first.

3. Housing assistance of up to $100,000 for the life of the child, including home construction and modification costs.

(b) However, the following expenses are not subject to compensation ~~such expenses shall not include~~:

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

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

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

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

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

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

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

b. Parents or legal guardians who received an award pursuant to this section before January 1, 2021, and whose child currently receives benefits under the plan must receive a retroactive payment in an amount sufficient to bring the total award paid to the parents or legal guardians pursuant to sub-subparagraph a. to $250,000. This additional payment may be made in a lump sum or in periodic payments as designated by the parents or legal guardians and must be paid by July 1, 2021.

2.a. Death benefit for the infant in an amount of $50,000.

b. Parents or legal guardians who received an award pursuant to this section, and whose child died since the inception of the program, must receive a retroactive payment in an amount sufficient to bring the total award paid to the parents or legal guardians pursuant to sub-subparagraph a. to $50,000. This additional payment may be made in a lump sum or in periodic payments as designated by the parents or legal guardians and must be paid by July 1, 2021 ~~$10,000~~.

Section 4. Section 766.3145, Florida Statutes, is created to read:

766.3145 Code of ethics.—

(1) On or before July 1 of each year, employees of the association must sign and submit a statement attesting that they do not have a conflict of interest as defined in part III of chapter 112. As a condition of employment, all prospective employees must sign and submit to the association a conflict-of-interest statement.

(2) The executive director, senior managers, and members of the board of directors are subject to the code of ethics under part III of chapter 112. For purposes of applying part III of chapter 112 to activities of the executive director, senior managers, and members of the board of directors, those persons are considered public officers or employees and the association is considered their agency. A board member may not vote on any measure that would inure to his or her special private gain or loss and, notwithstanding s. 112.3143(2), may not vote on any measure that he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312; or that he or she knows would inure to

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the special private gain or loss of a relative or business associate of the public officer. Before the vote is taken, such member shall publicly state to the board the nature of his or her interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

(3) Notwithstanding s. 112.3148, s. 112.3149, or any other law, an employee or board member may not knowingly accept, directly or indirectly, any gift or expenditure from a person or entity, or an employee or representative of such person or entity, which has a contractual relationship with the association or which is under consideration for a contract.

(4) An employee or board member who fails to comply with subsection (2) or subsection (3) is subject to penalties provided under ss. 112.317 and 112.3173.

(5) Any senior manager or executive director of the association who is employed on or after January 1, 2022, regardless of the date of hire, who subsequently retires or terminates employment is prohibited from representing another person or entity before the association for 2 years after retirement or termination of employment from the association.

Section 5. Section 766.315, Florida Statutes, is amended to read:

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

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

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

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

1. One citizen representative who is not affiliated with any of the groups identified in subparagraphs 2.-7.

2. One representative of participating physicians.

3. One representative of hospitals.

4. One representative of casualty insurers.

5. One representative of physicians other than participating physicians.

6. One parent or legal guardian representative of an injured infant under the plan.

7. One representative of an advocacy organization for children with disabilities.

(2)(a) The Chief Financial Officer may select the representative of the participating physicians from a list of at least three names recommended by the American Congress of Obstetricians and Gynecologists, District XII; the representative of hospitals from a list of at least three names

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recommended by the Florida Hospital Association; the representative of casualty insurers from a list of at least three names, one of which is recommended by the American Insurance Association, one of which is recommended by the Florida Insurance Council, and one of which is recommended by the Property Casualty Insurers Association of America; and the representative of physicians, other than participating physicians, from a list of three names recommended by the Florida Medical Association and a list of three names recommended by the Florida Osteopathic Medical Association. However, the Chief Financial Officer is not required to make an appointment from among the nominees of the respective associations. A participating physician who is named in a pending petition for a claim may not be appointed to the board. An appointed director who is a participating physician may not vote on any board matter relating to a claim accepted for an award for compensation if the physician is named in the petition for the claim.

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

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

(3) The directors may ~~shall~~ not transact any business or exercise any power of the plan except upon the affirmative vote

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of four ~~three~~ directors. The directors shall serve without salary~~,~~ but are entitled to receive reimbursement ~~each director shall be reimbursed~~ for actual and necessary expenses incurred in the performance of his or her official duties as a director of the plan in accordance with s. 112.061. The directors are ~~shall~~ not ~~be~~ subject to any liability with respect to the administration of the plan.

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

(a) Administer the plan.

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

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

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

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

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

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

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

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

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

(k) Indemnify any employee, agent, member of the board of

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directors or alternate thereof, or person acting on behalf of the plan in an official capacity, for expenses, including attorney ~~attorney's~~ fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred in connection with any action, suit, or proceeding, including any appeal thereof, arising out of such person's capacity to act ~~acting~~ on behalf of the plan, if~~; provided that~~ such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the plan and the health and best interest of the child having birth-related neurological injuries, and if ~~provided that~~, with respect to any criminal action or proceeding, such ~~the~~ person had reasonable cause to believe his or her conduct was lawful.

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

(b) All meetings of the board of directors are subject to the requirements of s. 286.011, and all books, records, and audits of the plan are open to the public for reasonable inspection ~~to the general public~~, except that a claim file in the possession of the association or its representative is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution until termination of litigation or settlement of the claim, although medical records and other portions of the claim file may remain confidential and exempt as otherwise provided by law. Any book, record, document, audit, or asset acquired by, prepared for, or paid for by the association is subject to the authority of the board of directors, which is responsible therefor.

(c) Except in the case of emergency meetings, the association shall give notice of any board meeting by publication on the association’s website not fewer than 7 days before the meeting. The association shall prepare an agenda in time to ensure that a copy of the agenda may be received at least 7 days before the meeting by any person who requests a copy and who pays the reasonable cost of the copy. The agenda, along with any meeting materials available in electronic form, excluding confidential and exempt information, shall be published on the association’s website. The agenda shall contain the items to be considered in order of presentation and a telephone number for members of the public to participate telephonically at the board meeting. After the agenda has been made available, a change shall be made only for good cause, as determined by the person designated to preside, and must be stated in the record. Notification of such change shall be at the earliest practicable time.

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

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

Office of Insurance Regulation or the Joint Legislative Auditing Committee may conduct an audit of the plan.

(f) ~~(e)~~ Funds held on behalf of the plan are funds of the State of Florida. The association may only invest plan funds in the investments and securities described in s. 215.47, and shall be subject to the limitations on investments contained in that section. All income derived from such investments will be credited to the plan. The State Board of Administration may invest and reinvest funds held on behalf of the plan in accordance with the trust agreement approved by the association and the State Board of Administration and within the provisions of ss. 215.44-215.53.

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

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

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

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

(c) A summary of reimbursement disputes and resolutions.

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

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

(8) On or before November 1, 2021, and by each November 1 thereafter, the association shall submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Financial Officer. The report must include:

(a) The number of petitions filed for compensation with the division, the number of claimants awarded compensation, the number of claimants denied compensation, and the reasons for the denial of compensation.

(b) The number and dollar amount of paid and denied compensation for expenses by category and the reasons for any denied compensation for expenses by category.

(c) The average turnaround time for paying or denying compensation for expenses.

(d) Legislative recommendations to improve the program.

(e) A summary of any pending or resolved litigation during the year which affects the plan.

(f) The amount of compensation paid to each association employee or member of the board of directors.

(g) For the initial report due on or before November 1, 2021, an actuarial report conducted by an independent actuary which provides an analysis of the estimated costs of implementing the following changes to the plan:

1. Reducing the minimum birth weight eligibility for a participant in the plan from 2,500 grams to 2,000 grams.

2. Revising the eligibility for participation in the plan by providing that an infant must be permanently and substantially mentally or physically impaired, rather than permanently and substantially mentally and physically impaired.

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3. Increasing the annual special benefit or quality of life benefit from $500 to $2,500 per calendar year.

Section 6. The amendments made to s. 766.31, Florida Statutes, by this act, apply to petitions pending or filed under s. 766.305, Florida Statutes, on or after January 1, 2021. However, s. 766.31(1)(d)1.b. and 2.b., Florida Statutes, as created by this act, apply retroactively.

Section 7. The Agency for Health Care Administration must review its Medicaid third-party liability functions and rights under s. 409.910, Florida Statutes, relative to the Florida Birth-Related Neurological Injury Compensation Plan established under s. 766.303, Florida Statutes, and must include in its review the extent and value of the liabilities owed by the plan as a third-party benefit provider. Based on its findings, the agency shall provide recommendations regarding the development of

================= T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete lines 376 - 427

and insert:

766.31, F.S.; revising requirements for the award for compensation for claims under the plan; authorizing parents or legal guardians receiving benefits under the plan to file a petition with the Division of Administrative Hearings to dispute the denial or amount of reimbursement of actual expenses; increasing the amount that may be awarded to the parents or legal guardians of an infant found to have sustained a

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birth-related neurological injury; requiring that such amount be increased annually; requiring the plan to provide retroactive payments to certain parents or legal guardians which are sufficient to bring the total award to a specified amount; authorizing such payments to be made in a lump sum or periodically; requiring the plan to make such payments by a specified date; increasing the death benefit for an infant found to have sustained a birth-related neurological injury; requiring the plan to provide retroactive payments to certain parents or legal guardians which are sufficient to bring the total death benefit award to a specified amount; authorizing such payments to be made in a lump sum or periodically; requiring the plan to make such payments by a specified date; creating s. 766.3145, F.S.; requiring association employees to annually sign and submit a conflict-of-interest statement as a condition of employment; requiring prospective employees to sign and submit such statement as a condition of employment; providing that the executive director, senior managers, and members of the board of directors are subject to specified provisions; prohibiting board members from voting on measures under certain circumstances; providing procedures and requirements for board members who have a conflict of interest; prohibiting employees and board members from accepting gifts or expenditures from certain individuals and entities; providing penalties; prohibiting certain

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senior managers and executive directors from representing persons or entities before the association for a specified timeframe; amending s. 766.315, F.S.; revising the membership of the board of directors of the association; prohibiting certain appointed directors from voting on board matters relating to a claim if they were named in the petition for the claim; providing a term limit for directors; revising the process for recommending new directors; authorizing removal of a director from office for specified reasons; revising the powers of the directors; providing that meetings of the board of directors are subject to the public meetings and records law; specifying notice and agenda requirements for board meetings; requiring the association to furnish a list of compensable expenses to parents and legal guardians receiving benefits; requiring the association to publish a report on its website by a specified date annually; providing requirements for such report; requiring the association to submit a report to the Governor, Legislature, and Chief Financial Officer by a specified date annually; providing requirements for such report; providing applicability; requiring the Agency for Health Care Administration to conduct a review and provide certain recommendations regarding Medicaid third-party benefits payable by and recoverable from the plan;