

Amendment No.

CHAMBER ACTION

Senate

House

.

Representative Koster offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

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

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

(2) DUTIES.—The Auditor General shall:

(n) At least once every 3 years, conduct an operational audit of the Florida Birth-Related Neurological Injury Compensation Association. Each operational audit shall include, at a minimum, an assessment of compliance with ss. 766.303-766.315, and compliance with the public records and public

401309

Approved For Filing: 4/27/2021 7:45:54 AM

Amendment No.

14 meetings laws of this state. The first operational audit must be
15 completed by August 15, 2021.

16
17 The Auditor General shall perform his or her duties
18 independently but under the general policies established by the
19 Legislative Auditing Committee. This subsection does not limit
20 the Auditor General's discretionary authority to conduct other
21 audits or engagements of governmental entities as authorized in
22 subsection (3).

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

25 766.303 Florida Birth-Related Neurological Injury
26 Compensation Plan; exclusiveness of remedy.—

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

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

32 766.31 Administrative law judge awards for birth-related
33 neurological injuries; notice of award.—

34 (1) Upon determining that an infant has sustained a birth-
35 related neurological injury and that obstetrical services were
36 delivered by a participating physician at the birth, the
37 administrative law judge shall make an award providing
38 compensation for the following items relative to such injury:

401309

Approved For Filing: 4/27/2021 7:45:54 AM

Amendment No.

39 (a) Actual expenses for medically necessary and reasonable
40 medical and hospital, habilitative and training, family
41 residential or custodial care, professional residential, and
42 custodial care and service, for medically necessary drugs,
43 special equipment, and facilities, and for related travel.

44 However, such expenses shall not include:

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

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

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

58 4. Expenses for which the infant has received
59 reimbursement, or for which the infant is contractually entitled
60 to receive reimbursement, pursuant to the provisions of any
61 health or sickness insurance policy or other private insurance
62 program.

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401309

Approved For Filing: 4/27/2021 7:45:54 AM

Amendment No.

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

71 (b)1. Periodic payments of an award to the parents or
72 legal guardians of the infant found to have sustained a birth-
73 related neurological injury, which award may ~~shall~~ not exceed
74 \$100,000. However, at the discretion of the administrative law
75 judge, such award may be made in a lump sum. Beginning on
76 January 1, 2021, the award may not exceed \$250,000 and each
77 January 1 thereafter, the award authorized under this paragraph
78 shall increase by 3 percent.

79 2. Death benefit for the infant in an amount of \$50,000
80 \$10,000.

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

83 766.3145 Code of ethics.—

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

401309

Approved For Filing: 4/27/2021 7:45:54 AM

Amendment No.

89 interest statement.

90 (2) The executive director, senior managers, and members
91 of the board of directors are subject to the code of ethics
92 under part III of chapter 112. For purposes of applying part III
93 of chapter 112 to activities of the executive director, senior
94 managers, and members of the board of directors, those persons
95 are considered public officers or employees and the association
96 is considered their agency. A board member may not vote on any
97 measure that would inure to his or her special private gain or
98 loss and, notwithstanding s. 112.3143(2), may not vote on any
99 measure that he or she knows would inure to the special private
100 gain or loss of any principal by whom he or she is retained or
101 to the parent organization or subsidiary of a corporate
102 principal by which he or she is retained, other than an agency
103 as defined in s. 112.312; or that he or she knows would inure to
104 the special private gain or loss of a relative or business
105 associate of the public officer. Before the vote is taken, such
106 member shall publicly state to the board the nature of his or
107 her interest in the matter from which he or she is abstaining
108 from voting and, within 15 days after the vote occurs, disclose
109 the nature of his or her interest as a public record in a
110 memorandum filed with the person responsible for recording the
111 minutes of the meeting, who shall incorporate the memorandum in
112 the minutes.

113 (3) Notwithstanding s. 112.3148, s. 112.3149, or any other

401309

Approved For Filing: 4/27/2021 7:45:54 AM

Amendment No.

114 law, an employee or board member may not knowingly accept,
115 directly or indirectly, any gift or expenditure from a person or
116 entity, or an employee or representative of such person or
117 entity, which has a contractual relationship with the
118 association or which is under consideration for a contract.

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

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

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

130 766.315 Florida Birth-Related Neurological Injury
131 Compensation Association; board of directors; notice of
132 meetings; report.-

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

401309

Approved For Filing: 4/27/2021 7:45:54 AM

Amendment No.

139 state seal.

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

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

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

148 2. One representative of participating physicians.

149 3. One representative of hospitals.

150 4. One representative of casualty insurers.

151 5. One representative of physicians other than
152 participating physicians.

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

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

157 (2) (a) The Chief Financial Officer may select the
158 representative of the participating physicians from a list of at
159 least three names recommended by the American Congress of
160 Obstetricians and Gynecologists, District XII; the
161 representative of hospitals from a list of at least three names
162 recommended by the Florida Hospital Association; the
163 representative of casualty insurers from a list of at least

401309

Approved For Filing: 4/27/2021 7:45:54 AM

Amendment No.

164 three names, one of which is recommended by the American
165 Insurance Association, one of which is recommended by the
166 Florida Insurance Council, and one of which is recommended by
167 the Property Casualty Insurers Association of America; and the
168 representative of physicians, other than participating
169 physicians, from a list of three names recommended by the
170 Florida Medical Association and a list of three names
171 recommended by the Florida Osteopathic Medical Association.
172 However, the Chief Financial Officer is not required to make an
173 appointment from among the nominees of the respective
174 associations. A participating physician who is named in a
175 pending petition for a claim may not be appointed to the board.
176 An appointed director who is a participating physician may not
177 vote on any board matter relating to a claim accepted for an
178 award for compensation if the physician is named in the petition
179 for the claim.

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

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

401309

Approved For Filing: 4/27/2021 7:45:54 AM

Amendment No.

189 (3) The directors may ~~shall~~ not transact any business or
190 exercise any power of the plan except upon the affirmative vote
191 of four ~~three~~ directors. The directors shall serve without
192 salary, but are entitled to receive reimbursement ~~each director~~
193 ~~shall be reimbursed~~ for actual and necessary expenses incurred
194 in the performance of his or her official duties as a director
195 of the plan in accordance with s. 112.061. The directors are
196 ~~shall not be~~ subject to any liability with respect to the
197 administration of the plan.

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

199 (a) Administer the plan.

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

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

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

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

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

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

213 (h) Enter into such contracts as are necessary or proper

401309

Approved For Filing: 4/27/2021 7:45:54 AM

Amendment No.

214 to administer the plan.

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

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

221 (k) Indemnify any employee, agent, member of the board of
222 directors or alternate thereof, or person acting on behalf of
223 the plan in an official capacity, for expenses, including
224 attorney ~~attorney's~~ fees, judgments, fines, and amounts paid in
225 settlement actually and reasonably incurred in connection with
226 any action, suit, or proceeding, including any appeal thereof,
227 arising out of such person's capacity to act ~~acting~~ on behalf of
228 the plan, ~~if, provided that~~ such person acted in good faith and
229 in a manner he or she reasonably believed to be in, or not
230 opposed to, the best interests of the plan and the health and
231 best interest of the child having birth-related neurological
232 injuries, and if ~~provided that,~~ with respect to any criminal
233 action or proceeding, such ~~the~~ person had reasonable cause to
234 believe his or her conduct was lawful.

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

237 (b) All meetings of the board of directors are subject to
238 the requirements of s. 286.011, and all books, records, and

401309

Approved For Filing: 4/27/2021 7:45:54 AM

Amendment No.

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

250 (c) Except in the case of emergency meetings, the
251 association shall give notice of any board meeting by
252 publication on the association's website not fewer than 7 days
253 before the meeting. The association shall prepare an agenda in
254 time to ensure that a copy of the agenda may be received at
255 least 7 days before the meeting by any person who requests a
256 copy and who pays the reasonable cost of the copy. The agenda,
257 along with any meeting materials available in electronic form,
258 excluding confidential and exempt information, shall be
259 published on the association's website. The agenda shall contain
260 the items to be considered in order of presentation and a
261 telephone number for members of the public to participate
262 telephonically at the board meeting. After the agenda has been
263 made available, a change shall be made only for good cause, as

401309

Approved For Filing: 4/27/2021 7:45:54 AM

Amendment No.

264 determined by the person designated to preside, and must be
265 stated in the record. Notification of such change shall be at
266 the earliest practicable time.

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

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

282 (f)~~(e)~~ Funds held on behalf of the plan are funds of the
283 State of Florida. The association may only invest plan funds in
284 the investments and securities described in s. 215.47, and shall
285 be subject to the limitations on investments contained in that
286 section. All income derived from such investments will be
287 credited to the plan. The State Board of Administration may
288 invest and reinvest funds held on behalf of the plan in

401309

Approved For Filing: 4/27/2021 7:45:54 AM

Amendment No.

289 accordance with the trust agreement approved by the association
290 and the State Board of Administration and within the provisions
291 of ss. 215.44-215.53.

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

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

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

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

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

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

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

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

401309

Approved For Filing: 4/27/2021 7:45:54 AM

Amendment No.

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

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

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

323 (d) Legislative recommendations to improve the program.

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

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

328 (g) For the initial report due on or before November 1,
329 2021, an actuarial report conducted by an independent actuary
330 which provides an analysis of the estimated costs of
331 implementing the following changes to the plan:

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

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

401309

Approved For Filing: 4/27/2021 7:45:54 AM

Amendment No.

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

340 Section 6. The amendments made to s. 766.31, Florida
341 Statutes, by this act, apply to petitions pending or filed under
342 s. 766.305, Florida Statutes, on or after January 1, 2021.

343 Section 7. The Agency for Health Care Administration must
344 review its Medicaid third-party liability functions and rights
345 under s. 409.910, Florida Statutes, relative to the Florida
346 Birth-Related Neurological Injury Compensation Plan established
347 under s. 766.303, Florida Statutes, and must include in its
348 review the extent and value of the liabilities owed by the plan
349 as a third-party benefit provider. The agency shall develop
350 policies and procedures to ensure robust implementation of
351 agency functions and rights relative to the primacy of the
352 plan's third-party benefits payable under s. 766.31(1)(a)1. and
353 3., Florida Statutes, and recoveries due the agency under s.
354 409.910, Florida Statutes. On or before November 1, 2021, the
355 agency must submit to the President of the Senate, the Speaker
356 of the House of Representatives, and the Chief Financial Officer
357 a report of its findings regarding the extent and value of the
358 liabilities owed by the plan.

359 Section 8. This act shall take effect upon becoming a law.
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361 -----

362 **T I T L E A M E N D M E N T**

401309

Approved For Filing: 4/27/2021 7:45:54 AM

Amendment No.

363 Remove everything before the enacting clause and insert:

364 A bill to be entitled

365 An act relating to the Florida Birth-Related
366 Neurological Injury Compensation Plan; amending s.
367 11.45, F.S.; requiring the Auditor General to audit
368 the Florida Birth-Related Neurological Injury
369 Compensation Association at least once every 3 years;
370 providing requirements for such audit; amending s.
371 766.303, F.S.; requiring that the association
372 administer the Florida Birth-Related Neurological
373 Injury Compensation Plan in a manner that promotes and
374 protects the health and best interests of children
375 with birth-related neurological injuries; amending s.
376 766.31, F.S.; authorizing parents or legal guardians
377 receiving benefits under the plan to file a petition
378 with the Division of Administrative Hearings to
379 dispute the denial or amount of reimbursement of
380 actual expenses; increasing the amount that may be
381 awarded to the parents or legal guardians of an infant
382 found to have sustained a birth-related neurological
383 injury; requiring that such amount be increased
384 annually; increasing the death benefit for an infant
385 found to have sustained a birth-related neurological
386 injury; creating s. 766.3145, F.S.; requiring
387 association employees to annually sign and submit a

401309

Approved For Filing: 4/27/2021 7:45:54 AM

Amendment No.

388 conflict-of-interest statement as a condition of
389 employment; requiring prospective employees to sign
390 and submit such statement as a condition of
391 employment; providing that the executive director,
392 senior managers, and members of the board of directors
393 are subject to specified provisions; prohibiting board
394 members from voting on measures under certain
395 circumstances; providing procedures and requirements
396 for board members who have a conflict of interest;
397 prohibiting employees and board members from accepting
398 gifts or expenditures from certain individuals and
399 entities; providing penalties; prohibiting certain
400 senior managers and executive directors from
401 representing persons or entities before the
402 association for a specified timeframe; amending s.
403 766.315, F.S.; revising the membership of the board of
404 directors of the association; prohibiting certain
405 appointed directors from voting on board matters
406 relating to a claim if they were named in the petition
407 for the claim; providing a term limit for directors;
408 revising the process for recommending new directors;
409 authorizing removal of a director from office for
410 specified reasons; revising the powers of the
411 directors; providing that meetings of the board of
412 directors are subject to the public meetings and

401309

Approved For Filing: 4/27/2021 7:45:54 AM

Amendment No.

413 records law; specifying notice and agenda requirements
414 for board meetings; requiring the association to
415 furnish a list of compensable expenses to parents and
416 legal guardians receiving benefits; requiring the
417 association to publish a report on its website by a
418 specified date annually; providing requirements for
419 such report; requiring the association to submit a
420 report to the Governor, Legislature, and Chief
421 Financial Officer by a specified date annually;
422 providing requirements for such report; providing
423 applicability; requiring the Agency for Health Care
424 Administration to conduct a review and develop
425 policies and procedures regarding Medicaid third-party
426 benefits payable by and recoverable from the Florida
427 Birth-Related Neurological Injury Compensation Plan;
428 requiring the agency to submit a report of its
429 findings to the Legislature and the Chief Financial
430 Officer by a specified date; providing an effective
431 date.

401309

Approved For Filing: 4/27/2021 7:45:54 AM