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LEGISLATIVE ACTION

Senate	.	House
Comm: OO	.	
04/20/2021	.	
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The Committee on Appropriations (Book) recommended the following:

**Senate Amendment (with title amendment)**

Before line 14

insert:

Section 1. Subsection (2) of section 766.301, Florida Statutes, is amended to read:

766.301 Legislative findings and intent.—

(2) It is the intent of the Legislature to provide compensation, on a no-fault basis, for a limited class of catastrophic injuries that result in unusually high costs for



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11 custodial care and rehabilitation. This plan shall apply only to  
12 birth-related neurological injuries and is not intended to serve  
13 as the payor of last resort for claims arising out of such  
14 injuries. It is not the intent of the Legislature to shield  
15 physicians who engage in willful misconduct, gross negligence,  
16 or recklessness or to preclude individuals from filing  
17 legitimate claims of medical malpractice against such  
18 physicians.

19 Section 2. Subsection (5) of section 766.305, Florida  
20 Statutes, is amended to read:

21 766.305 Filing of claims and responses; medical  
22 disciplinary review.—

23 (5) Upon receipt of such petition, the Division of Medical  
24 Quality Assurance shall review the information therein and  
25 determine whether it involved conduct by a physician licensed  
26 under chapter 458 or an osteopathic physician licensed under  
27 chapter 459 which that is subject to disciplinary action. If a  
28 physician is involved in more than one filed claim, the division  
29 also must review the circumstances of all such claims together  
30 to determine whether the physician's conduct establishes a  
31 pattern of practice subject to disciplinary action. Section  
32 456.073 applies in such cases, in which case the provisions of  
33 s. 456.073 shall apply.

34 Section 3. Section 766.313, Florida Statutes, is amended to  
35 read:

36 766.313 Limitation on claim.—Any claim for compensation  
37 under ss. 766.301-766.316 which that is filed more than 8 5  
38 years after the birth of an infant alleged to have a birth-  
39 related neurological injury is shall be barred.



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40 Section 4. Section 766.3135, Florida Statutes, is created  
41 to read:

42 766.3135 Plan services.—

43 (1) Pursuant to an award under s. 766.31(1), the  
44 association is responsible for reimbursement of actual expenses  
45 for medically necessary and reasonable services for the injured  
46 child under the plan. The plan is not intended to serve as the  
47 payor of last resort and the association may not hold itself out  
48 as such. The association must reimburse the parent or legal  
49 guardian of the child for any service, drug, equipment, or  
50 treatment at a reasonable rate if he or she submits a letter of  
51 medical necessity from the child's physician or other treating  
52 health care provider for such service, drug, equipment, or  
53 treatment. The association may establish an independent review  
54 process that uses medical experts to review such requests after  
55 reimbursement to determine whether the physician's or health  
56 care provider's determination of medical necessity was  
57 reasonable. If the medical experts find that such determination  
58 was not reasonable, the association may ask the parent or legal  
59 guardian to provide a letter of medical necessity from a second  
60 health care provider. If provided, the association may not take  
61 further action. If the parent or legal guardian is unable to  
62 provide a second letter, the association may debit the  
63 reimbursement from future reimbursements.

64 (2) Parents or legal guardians of the child are eligible  
65 for reimbursement of expenses for any of the following, at a  
66 minimum:

67 (a) Medical, dental, and hospital care; habilitative  
68 services and training; mental health services; music or art



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69 therapy; family residential or custodial care; and professional  
70 residential and custodial care and services. Reimbursement for  
71 private nursing staff or attendant care under this paragraph  
72 must be provided at a rate at least equal to the state or  
73 federal minimum wage, whichever is greater, and must be  
74 reimbursed at the same rate regardless of the setting in which  
75 the care is provided.

76 (b) Medically necessary drugs, special equipment, and  
77 facilities.

78 (c) Family support services for immediate family members  
79 living with the child, including, but not limited to, mental  
80 health services.

81 (d) Travel expenses related to the child's care. The  
82 association may not limit the amount or type of travel which may  
83 be reimbursed or differentiate reimbursement rates based on the  
84 purpose of such travel, provided that it is related to the  
85 child's care.

86 (e) Entertainment and other promotion of the child's  
87 wellbeing. The parents or legal guardians of a child are  
88 entitled to a reimbursement of at least \$1,500 per year under  
89 this paragraph.

90 (f) Nutrition and hygiene needs of the child. The  
91 association may not limit reimbursement for diapers, baby food,  
92 or formula if such items are appropriate for the child's age or  
93 developmental stage.

94 (3) The association is also responsible for the following:

95 (a) Providing ongoing transportation assistance for the  
96 life of the child. The association must provide parents or legal  
97 guardians with a reliable method of transportation for the care



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98 of the child or reimburse them the cost of upgrading an existing  
99 vehicle to accommodate the child's needs. The mode of  
100 transportation must take into account the special accommodations  
101 required for the specific child. The association may not limit  
102 such transportation assistance based on the child's age or  
103 weight.

104 (b) Providing ongoing housing assistance for the life of  
105 the child. Such assistance includes, but is not limited to:

106 1. Payment assistance for rent and utilities to cover the  
107 cost of any increase due to the accommodation of the child's  
108 condition and medical needs.

109 2. Reimbursement of moving costs.

110 3. Payment assistance for home construction costs up to  
111 \$100,000.

112 (c) Establishing an online network portal for parents and  
113 legal guardians of children under the plan to support one  
114 another and exchange information and resources. Access to the  
115 online network must be provided at no cost to the parents and  
116 legal guardians.

117 Section 5. Paragraph (a) of subsection (5) of section  
118 766.314, Florida Statutes, is amended to read:

119 766.314 Assessments; plan of operation.—

120 (5) (a) Beginning January 1, 1990, the persons and entities  
121 listed in paragraphs (4) (b) and (c), except those persons or  
122 entities who are specifically excluded from said provisions, as  
123 of the date determined in accordance with the plan of operation,  
124 taking into account persons licensed subsequent to the payment  
125 of the initial assessment, shall pay an annual assessment in the  
126 amount equal to the initial assessments provided in paragraphs



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127 (4) (b) and (c). If payment of the annual assessment by a  
128 physician is received by the association by January 31 of any  
129 calendar year, the physician shall qualify as a participating  
130 physician for that entire calendar year. If the payment is  
131 received after January 31 of any calendar year, the physician  
132 shall qualify as a participating physician for that calendar  
133 year only from the date the payment was received by the  
134 association. Beginning on January 1, 2022, and on each January 1  
135 thereafter, the annual assessment shall increase by 3 percent.  
136 On January 1, 1991, and on each January 1 thereafter, the  
137 association shall determine the amount of additional assessments  
138 necessary pursuant to subsection (7), in the manner required by  
139 the plan of operation, subject to any increase determined to be  
140 necessary by the Office of Insurance Regulation pursuant to  
141 paragraph (7) (b). On July 1, 1991, and on each July 1  
142 thereafter, the persons and entities listed in paragraphs (4) (b)  
143 and (c), except those persons or entities who are specifically  
144 excluded from said provisions, shall pay the additional  
145 assessments which were determined on January 1. Beginning  
146 January 1, 1990, the entities listed in paragraph (4) (a),  
147 including those licensed on or after October 1, 1988, shall pay  
148 an annual assessment of \$50 per infant delivered during the  
149 prior calendar year. The additional assessments which were  
150 determined on January 1, 1991, pursuant to ~~the provisions of~~  
151 subsection (7) are ~~shall~~ not be due and payable by the entities  
152 listed in paragraph (4) (a) until July 1.

153  
154 ===== T I T L E A M E N D M E N T =====

155 And the title is amended as follows:



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156 Delete line 3  
157 and insert:  
158 neurological injuries; amending s. 766.301, F.S.;  
159 revising legislative intent; amending s. 766.305,  
160 F.S.; requiring the Division of Medical Quality  
161 Assurance of the Department of Health to review all  
162 claims under the Florida Birth-Related Neurological  
163 Injury Compensation Plan involving a particular  
164 physician together when making certain determinations;  
165 amending s. 766.313, F.S.; revising the timeframe  
166 within which birth-related neurological injury  
167 compensation claims must be filed; creating s.  
168 766.3135, F.S.; providing that the Florida Birth-  
169 Related Neurological Injury Compensation Association  
170 is responsible for reimbursing parents and legal  
171 guardians for actual expenses for medically necessary  
172 and reasonable services for the injured child;  
173 prohibiting the association from holding itself out as  
174 the payor of last resort for services under the plan;  
175 requiring the association to reimburse parents and  
176 legal guardians for services, drugs, equipment, or  
177 treatment if they provide a certain letter of medical  
178 necessity; authorizing the association to establish a  
179 certain review process for such reimbursements;  
180 specifying expenses for which parents and legal  
181 guardians are eligible to receive reimbursement;  
182 providing duties for the association; amending s.  
183 766.314, F.S.; beginning on a specified date,  
184 requiring the annual assessments imposed on physicians



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and certain entities participating in the plan to be  
increased by a certain percentage annually; amending  
s. 766.31, F.S.;