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LEGISLATIVE ACTION

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

1 **Senate Amendment to Amendment (754030) (with directory and**
2 **title amendments)**

3
4 Delete lines 114 - 292

5 and insert:

6 denied within 90 days after receipt of the request and must be
7 accompanied by a written explanation of the determination.
8 Failure to pay or deny the claim within 120 days after receipt
9 of the request creates an uncontestable obligation to pay the
10 expenses.



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11 (3) The award must require the association to conduct a
12 periodic review of benefits provided to claimants to ensure that
13 they are receiving the greatest benefit amount for which they
14 are eligible.

15 Section 2. Section 766.3145, Florida Statutes, is created
16 to read:

17 766.3145 Code of ethics.-

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

24 (2) The executive director, the ombudsman, senior managers,
25 and members of the board of directors are subject to part III of
26 chapter 112, including, but not limited to, the code of ethics
27 and the public disclosure and reporting of financial interests
28 requirements of s. 112.3145. For purposes of applying part III
29 of chapter 112 to activities of the executive director, senior
30 managers, and members of the board of directors, those persons
31 are considered public officers or employees and the association
32 is considered their agency. Pursuant to s. 112.3143(2), a board
33 member may not vote on any measure that would inure to his or
34 her special private gain or loss; that he or she knows would
35 inure to the special private gain or loss of any principal by
36 whom he or she is retained or to the parent organization or
37 subsidiary of a corporate principal by which he or she is
38 retained, other than an agency as defined in s. 112.312; or that
39 he or she knows would inure to the special private gain or loss



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40 of a relative or business associate of the public officer.
41 Before the vote is taken, such member shall publicly state to
42 the board the nature of his or her interest in the matter from
43 which he or she is abstaining from voting and, within 15 days
44 after the vote occurs, disclose the nature of his or her
45 interest as a public record in a memorandum filed with the
46 person responsible for recording the minutes of the meeting, who
47 shall incorporate the memorandum in the minutes. The executive
48 director, senior managers, and board members are also required
49 to file such disclosures with the Commission on Ethics and the
50 Office of Insurance Regulation. The executive director of the
51 association or his or her designee shall notify each existing
52 and newly appointed member of the board of directors and senior
53 managers of his or her duty to comply with the reporting
54 requirements of part III of chapter 112. At least quarterly, the
55 executive director or his or her designee shall submit to the
56 Commission on Ethics a list of names of the members of the board
57 of directors and senior managers who are subject to the public
58 disclosure requirements under s. 112.3145.

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

65 (4) An employee or board member who fails to comply with
66 subsection (2) or (3) is subject to penalties provided under ss.
67 112.317 and 112.3173.

68 (5) Any senior manager or executive director of the



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69 association who is employed on or after January 1, 2022,
70 regardless of the date of hire, who subsequently retires or
71 terminates employment is prohibited from representing another
72 person or entity before the association for 2 years after
73 retirement or termination of employment from the association.

74 Section 3. Paragraphs (a) and (c) of subsection (1),
75 subsection (2), paragraph (i) of subsection (4), and paragraph
76 (b) of subsection (5) of section 766.315, Florida Statutes, are
77 amended, and subsection (6) is added to that section, to read:

78 766.315 Florida Birth-Related Neurological Injury
79 Compensation Association; board of directors.—

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

87 (c) The directors shall be appointed by the Chief Financial
88 Officer, ensuring that the board represents the gender diversity
89 of this state, as follows:

- 90 1. One citizen representative.
- 91 2. One representative of participating physicians.
- 92 3. One representative of hospitals.
- 93 4. One representative of casualty insurers.
- 94 5. One representative of physicians other than
95 participating physicians.

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



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

100 8. One representative who is a financial management expert
101 with a fiduciary duty to clients.

102 9. One member in good standing of The Florida Bar who is
103 not affiliated with any of the groups identified in
104 subparagraphs 2.-8. and who has experience representing cases on
105 behalf of children who have been injured in a health care
106 setting. This director must not have represented anyone in legal
107 matters against the association within the 2-year period
108 immediately preceding appointment to the board and may not
109 handle any legal matters against the association while serving
110 as a director or within 2 years after leaving the board.

111 (2) (a) The Chief Financial Officer may select the
112 representative of the participating physicians from a list of at
113 least three names recommended by the American Congress of
114 Obstetricians and Gynecologists, District XII; the
115 representative of hospitals from a list of at least three names
116 recommended by the Florida Hospital Association; the
117 representative of casualty insurers from a list of at least
118 three names, one of which is recommended by the American
119 Insurance Association, one of which is recommended by the
120 Florida Insurance Council, and one of which is recommended by
121 the Property Casualty Insurers Association of America; ~~and~~ the
122 representative of physicians, other than participating
123 physicians, from a list of three names recommended by the
124 Florida Medical Association and a list of three names
125 recommended by the Florida Osteopathic Medical Association; the
126 parent or guardian of a child from a list of three names



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127 recommended by the Governor; the financial management expert
128 from a list of three names recommended by the Governor; and the
129 member of The Florida Bar from a list of three names recommended
130 by the President of The Florida Bar. However, the Chief
131 Financial Officer is not required to make an appointment from
132 among the nominees of the respective associations. A
133 participating physician who is named in a pending petition for a
134 claim may not be appointed to the board. An appointed director
135 who is a participating physician may not vote on any board
136 matter relating to a claim accepted for an award for
137 compensation if the physician was named in the petition for the
138 claim.

139 (b) The Chief Financial Officer shall promptly notify the
140 appropriate ~~medical~~ association or person identified in
141 paragraph (a) who makes recommendations upon the occurrence of
142 any vacancy, and like nominations may be made for the filling of
143 the vacancy.

144 (c) The Governor, the President of the Senate, the Speaker
145 of the House of Representatives, or the Chief Financial Officer
146 may remove a director from office for misconduct, malfeasance,
147 mifeasance, or neglect of duty in office. Any vacancy so
148 created shall be filled as provided in paragraph (a).

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

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

154 1. The board of directors shall employ an ombudsman who
155 will serve at the pleasure of, and must report directly to, the



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156 board and who will act as an advocate for the parents and legal
157 guardians of plan participants.

158 2. The ombudsman shall do all of the following:

159 a. Provide information and assistance, outreach, and
160 education to parents and legal guardians of plan participants
161 regarding plan benefits and community, state, and federal
162 government resources.

163 b. Investigate complaints of parents or legal guardians of
164 plan participants regarding the operation of the plan.

165 c. Provide an annual report to the board regarding the
166 ombudsman's activities, the disposition of complaints, and any
167 recommendations to improve the operations of the plan and the
168 delivery of benefits to participants.

169 (5)

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

183 (6) On or before January 31, 2022, and by each January 31
184 thereafter, the association shall submit an annual report to the



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185 Governor, the President of the Senate, and the Speaker of the
186 House of Representatives. The report must include:

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

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

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

196 (d) Legislative recommendations to improve the program.

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

199 (f) For the initial report due on or before January 31,
200 2022, an actuarial report conducted by an independent actuary
201 that provides an analysis of the estimated costs of implementing
202 the following changes to the plan:

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

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

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

211 Section 4. The Auditor General shall conduct an annual
212 performance audit of the association and the plan to evaluate
213 management's performance in administering the laws, policies,



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214 and procedures governing the operations of the association and
215 the plan in an efficient and effective manner.

216 (1) The audit must include evaluations of all of the
217 following:

218 (a) The protocols used for the payment of expenses,
219 including standards for determining medical necessity and
220 reasonableness of requests for medical care, services, or other
221 benefits provided under the plan and the timeliness of the
222 payment of expenses.

223 (b) The effectiveness of the association's outreach to
224 inform parents and legal guardians of participants of available
225 benefits and any changes in benefits and processes to resolve
226 disputes regarding the payment of expenses internally.

227 (c) The efficacy of the current processes for the
228 procurement of goods and services.

229 (d) The internal controls of the plan and association.

230 (2) The Auditor General shall release the audit and publish
231 it on its website by January 15 of each year, beginning on
232 January 15, 2022.

233
234 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

235 And the directory clause is amended as follows:

236 Delete lines 5 - 6

237 and insert:

238 Section 5. Present subsection (3) of section 766.31, is
239 redesignated as subsection (4), a new subsection (3) is added to
240 that section, and subsections (1) and (2) are amended, to read:

241
242 ===== T I T L E A M E N D M E N T =====



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243 And the title is amended as follows:

244 Delete lines 355 - 366

245 and insert:

246 of directors; authorizing the Governor, the
247 Legislature, or the Chief Financial Officer to remove
248 a director for specified conduct; requiring the board
249 of directors to employ an ombudsman for a specified
250 purpose; providing duties of the ombudsman; providing
251 that meetings of the board of directors are subject to
252 public meeting requirements; requiring the association
253 to submit an annual report to the Governor and the
254 Legislature by a specified date; providing
255 requirements for the report; requiring the first
256 report to include a certain actuarial report;
257 providing requirements for the actuarial report;
258 requiring the Auditor General to conduct an annual
259 performance audit of the association and plan;
260 providing requirements for the audit; requiring the
261 Auditor General to release the audit and publish it on
262 its website by a specified date each year;