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LEGISLATIVE ACTION

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsections (1) and (2) of section 766.31,
Florida Statutes, are amended to read:

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

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



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

14 (a) Actual expenses for medically necessary and reasonable
15 medical and hospital, habilitative and training, family
16 residential or custodial care, professional residential, and
17 custodial care and service, for medically necessary drugs,
18 special equipment, and facilities, and for related travel.
19 Compensation must be provided for the following actual expenses,
20 at a minimum:

21 1. Diapers and baby formula for the infant from the time of
22 birth and pureed baby food or other baby food for the infant at
23 the appropriate age or developmental stage.

24 2. A total annual benefit of up to \$5,000 for parents or
25 legal guardians of the infant for psychotherapeutic services
26 obtained from providers licensed under chapter 490 or chapter
27 491.

28 3. Transportation reimbursement for all necessary trips to
29 the pharmacy each month for prescription fills for the infant.

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

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

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



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

45 4. Expenses for which the infant has received
46 reimbursement, or for which the infant is contractually entitled
47 to receive reimbursement, pursuant to the provisions of any
48 health or sickness insurance policy or other private insurance
49 program.

50
51 Expenses included under ~~this~~ paragraph (a) may not exceed shall
52 be limited to reasonable charges prevailing in the same
53 community for similar treatment of injured persons when such
54 treatment is paid for by the injured person.

55 (c) ~~(b)~~ 1. a. Periodic payments of an award to the parents or
56 legal guardians of the infant found to have sustained a birth-
57 related neurological injury, which award may shall not exceed
58 \$100,000. However, at the discretion of the administrative law
59 judge, such award may be made in a lump sum. Beginning on
60 January 1, 2021, the award may not exceed \$250,000, and each
61 January 1 thereafter the maximum award authorized under this
62 paragraph shall increase by 3 percent.

63 b. Parents or legal guardians who received an award
64 pursuant to this section before January 1, 2021, and whose child
65 currently receives benefits under the plan must receive a
66 retroactive payment in an amount sufficient to bring the total
67 award paid to the parents or legal guardians pursuant to sub-
68 paragraph a. to \$250,000. This additional payment may be made



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69 in a lump sum or in periodic payments as designated by the
70 parents or legal guardians.

71 2. Death benefit for the infant in an amount of \$50,000
72 ~~\$10,000~~.

73 (d)~~(e)~~ Reasonable expenses incurred in connection with the
74 filing of a claim under ss. 766.301-766.316, including
75 reasonable attorney's fees, which are ~~shall be~~ subject to the
76 approval and award of the administrative law judge. In
77 determining an award for attorney's fees, the administrative law
78 judge shall consider the following factors:

79 1. The time and labor required, the novelty and difficulty
80 of the questions involved, and the skill requisite to perform
81 the legal services properly.

82 2. The fee customarily charged in the locality for similar
83 legal services.

84 3. The time limitations imposed by the claimant or the
85 circumstances.

86 4. The nature and length of the professional relationship
87 with the claimant.

88 5. The experience, reputation, and ability of the lawyer or
89 lawyers performing services.

90 6. The contingency or certainty of a fee.

91

92 Should there be a final determination of compensability, and the
93 claimants accept an award under this section, the claimants are
94 ~~shall~~ not be liable for any expenses, including attorney's fees,
95 incurred in connection with the filing of a claim under ss.
96 766.301-766.316 other than those expenses awarded under this
97 section.



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98 (2) The award shall require the immediate payment of
99 expenses previously incurred and shall require that future
100 expenses be paid as incurred.

101 (a) Within 20 days after the receipt of a request for
102 payment of expenses, the plan must pay the expenses or notify
103 the parents or legal guardians, or their designee, that specific
104 additional information or documentation is needed to evaluate
105 the request or that the request for payment of the expenses is
106 being denied.

107 (b) Parents or legal guardians, or their designee, must
108 submit any additional information or documentation requested by
109 the plan within 35 days after receipt of the notification by the
110 plan that additional information or documentation is needed.
111 Additional information is considered submitted on the date it is
112 mailed or electronically submitted to the plan.

113 (c) A request for payment of expenses must be paid or
114 denied within 90 days after receipt of the request. Failure to
115 pay or deny the claim within 120 days after receipt of the
116 request creates an uncontestable obligation to pay the expenses.

117 Section 2. Section 766.3145, Florida Statutes, is created
118 to read:

119 766.3145 Code of ethics.—

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

126 (2) The executive director, the ombudsman, senior managers,



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127 and members of the board of directors are subject to part III of
128 chapter 112, including, but not limited to, the code of ethics
129 and the public disclosure and reporting of financial interests
130 requirements of s. 112.3145. For purposes of applying part III
131 of chapter 112 to activities of the executive director, senior
132 managers, and members of the board of directors, those persons
133 are considered public officers or employees and the association
134 is considered their agency. Pursuant to s. 112.3143(2), a board
135 member may not vote on any measure that would inure to his or
136 her special private gain or loss; that he or she knows would
137 inure to the special private gain or loss of any principal by
138 whom he or she is retained or to the parent organization or
139 subsidiary of a corporate principal by which he or she is
140 retained, other than an agency as defined in s. 112.312; or that
141 he or she knows would inure to the special private gain or loss
142 of a relative or business associate of the public officer.
143 Before the vote is taken, such member shall publicly state to
144 the board the nature of his or her interest in the matter from
145 which he or she is abstaining from voting and, within 15 days
146 after the vote occurs, disclose the nature of his or her
147 interest as a public record in a memorandum filed with the
148 person responsible for recording the minutes of the meeting, who
149 shall incorporate the memorandum in the minutes. The executive
150 director, senior managers, and board members are also required
151 to file such disclosures with the Commission on Ethics and the
152 Office of Insurance Regulation. The executive director of the
153 association or his or her designee shall notify each existing
154 and newly appointed member of the board of directors and senior
155 managers of his or her duty to comply with the reporting



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156 requirements of part III of chapter 112. At least quarterly, the
157 executive director or his or her designee shall submit to the
158 Commission on Ethics a list of names of the members of the board
159 of directors and senior managers who are subject to the public
160 disclosure requirements under s. 112.3145.

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

167 (4) An employee or board member who fails to comply with
168 subsection (2) or (3) is subject to penalties provided under ss.
169 112.317 and 112.3173.

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

176 Section 3. Paragraphs (a) and (c) of subsection (1),
177 paragraph (a) of subsection (2), and paragraph (i) of subsection
178 (4) of section 766.315, Florida Statutes, are amended, and
179 subsection (6) is added to that section, to read:

180 766.315 Florida Birth-Related Neurological Injury
181 Compensation Association; board of directors.—

182 (1) (a) The Florida Birth-Related Neurological Injury
183 Compensation Plan shall be governed by a board of seven ~~five~~
184 directors which shall be known as the Florida Birth-Related



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185 Neurological Injury Compensation Association. The association is
186 not a state agency, board, or commission. Notwithstanding ~~the~~
187 ~~provision of~~ s. 15.03, the association is authorized to use the
188 state seal.

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

191 1. One citizen representative.

192 2. One representative of participating physicians.

193 3. One representative of hospitals.

194 4. One representative of casualty insurers.

195 5. One representative of physicians other than
196 participating physicians.

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

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

201 (2) (a) The Chief Financial Officer may select the
202 representative of the participating physicians from a list of at
203 least three names recommended by the American Congress of
204 Obstetricians and Gynecologists, District XII; the
205 representative of hospitals from a list of at least three names
206 recommended by the Florida Hospital Association; the
207 representative of casualty insurers from a list of at least
208 three names, one of which is recommended by the American
209 Insurance Association, one of which is recommended by the
210 Florida Insurance Council, and one of which is recommended by
211 the Property Casualty Insurers Association of America; and the
212 representative of physicians, other than participating
213 physicians, from a list of three names recommended by the



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214 Florida Medical Association and a list of three names
215 recommended by the Florida Osteopathic Medical Association.
216 However, the Chief Financial Officer is not required to make an
217 appointment from among the nominees of the respective
218 associations. A participating physician who is named in a
219 pending petition for a claim may not be appointed to the board.
220 An appointed director who is a participating physician may not
221 vote on any board matter relating to a claim accepted for an
222 award for compensation if the physician was named in the
223 petition for the claim.

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

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

229 1. The board of directors shall employ an ombudsman who
230 will serve at the pleasure of, and must report directly to, the
231 board and who will act as an advocate for the parents and legal
232 guardians of plan participants.

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

234 a. Provide information and assistance, outreach, and
235 education to parents and legal guardians of plan participants
236 regarding plan benefits and community, state, and federal
237 government resources.

238 b. Investigate complaints of parents or legal guardians of
239 plan participants regarding the operation of the plan.

240 c. Provide an annual report to the board regarding the
241 ombudsman's activities, the disposition of complaints, and any
242 recommendations to improve the operations of the plan and the



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243 delivery of benefits to participants.

244 (6) On or before January 31, 2022, and by each January 31
245 thereafter, the association shall submit an annual report to the
246 Governor, the President of the Senate, and the Speaker of the
247 House of Representatives. The report must include:

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

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

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

257 (d) Legislative recommendations to improve the program.

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

260 (f) For the initial report due on or before January 31,
261 2022, an actuarial report conducted by an independent actuary
262 that provides an analysis of the estimated costs of implementing
263 the following changes to the plan:

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

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

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



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272 Section 4. The Auditor General shall conduct a performance
273 audit of the association and plan to evaluate management's
274 performance in administering the laws, policies, and procedures
275 governing the operations of the association and plan in an
276 efficient and effective manner.

277 (1) The audit must include evaluations of all of the
278 following:

279 (a) The protocols used for the payment of expenses,
280 including standards for determining medical necessity and
281 reasonableness of requests for medical care, services, or other
282 benefits provided under the plan and the timeliness of the
283 payment of expenses.

284 (b) The effectiveness of the association's outreach to
285 inform parents and legal guardians of participants of available
286 benefits and any changes in benefits and processes to resolve
287 disputes regarding the payment of expenses internally.

288 (c) The efficacy of the current processes for the
289 procurement of goods and services.

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

291 (2) The Auditor General shall release the audit by January
292 15, 2022.

293 Section 5. Sections 766.301-766.316, Florida Statutes, are
294 repealed on December 31, 2026, unless reviewed and saved from
295 repeal by the Legislature.

296 Section 6. The amendments made to s. 766.31(1)(c), Florida
297 Statutes, by this act apply to all claims filed under s.
298 766.305, Florida Statutes, for which an award was made through
299 entry of final order under s. 766.31(1), Florida Statutes, on or
300 after January 1, 2021.



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

302

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

304 And the title is amended as follows:

305 Delete everything before the enacting clause
306 and insert:

307 A bill to be entitled
308 An act relating to the Florida Birth-Related
309 Neurological Injury Compensation Plan; amending s.
310 766.31, F.S.; revising requirements for the award for
311 compensation for claims under the plan; increasing the
312 maximum amount that may be awarded to the parents or
313 legal guardians of an infant found to have sustained a
314 birth-related neurological injury, as of a specified
315 date; requiring that the maximum award amount be
316 increased by a certain percentage annually; requiring
317 the plan to provide retroactive payments in a
318 specified amount to certain parents or legal
319 guardians; authorizing such payment to made in lump
320 sum or periodic payments; increasing the amount of the
321 death benefit that must be awarded; requiring the plan
322 to act on a request for payment of expenses within a
323 specified timeframe; requiring parents or legal
324 guardians, or their designee, to submit any additional
325 information or documentation requested by the plan
326 within a specified timeframe; requiring the plan to
327 pay or deny a request within a specified timeframe;
328 providing that failure to pay or deny the claim within
329 a specified timeframe results in an uncontestable



330 obligation to pay the claim; creating s. 766.3145,
331 F.S.; requiring association employees to annually sign
332 and submit a conflict-of-interest statement as a
333 condition of employment; requiring prospective
334 employees to sign and submit such statement as a
335 condition of employment; providing that the executive
336 director, the ombudsman, senior managers, and the
337 board of directors are subject to specified
338 provisions; prohibiting board members from voting on
339 measures under certain circumstances; providing
340 procedures and requirements for board members who have
341 a conflict of interest; requiring the executive
342 director, senior managers, and board members to file
343 certain disclosures; requiring the executive director
344 or his or her designee to notify specified individuals
345 of the reporting requirements; requiring the executive
346 director or his or her designee to submit, at least
347 quarterly, a list of specified individuals to the
348 Commission on Ethics; prohibiting employees and board
349 members from accepting gifts or expenditures from
350 certain individuals; providing penalties; prohibiting
351 certain senior managers and executive directors from
352 representing persons or entities before the
353 association for a specified timeframe; amending s.
354 766.315, F.S.; revising membership of the plan's board
355 of directors; requiring the board of directors to
356 employ an ombudsman for a specified purpose; providing
357 duties of the ombudsman; requiring the association to
358 submit an annual report to the Governor and the



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359 Legislature by a specified date; providing
360 requirements for the report; requiring the first
361 report to include a certain actuarial report;
362 providing requirements for the actuarial report;
363 requiring the Auditor General to conduct a performance
364 audit of the association and plan; providing
365 requirements for the audit; requiring the Auditor
366 General to release the audit by a specified date;
367 providing for future repeal; providing applicability;
368 providing an effective date.