



790104

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
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 or denied within 90 days after receipt of the request and must  
7 be 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           (4) The award must require the reimbursement of expenses  
16 for private nursing staff or attendant care to be provided at a  
17 rate at least equal to the state or federal minimum wage,  
18 whichever is greater.

19           Section 2. Section 766.3145, Florida Statutes, is created  
20 to read:

21           766.3145 Code of ethics.-

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

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



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40 whom he or she is retained or to the parent organization or  
41 subsidiary of a corporate principal by which he or she is  
42 retained, other than an agency as defined in s. 112.312; or that  
43 he or she knows would inure to the special private gain or loss  
44 of a relative or business associate of the public officer.  
45 Before the vote is taken, such member shall publicly state to  
46 the board the nature of his or her interest in the matter from  
47 which he or she is abstaining from voting and, within 15 days  
48 after the vote occurs, disclose the nature of his or her  
49 interest as a public record in a memorandum filed with the  
50 person responsible for recording the minutes of the meeting, who  
51 shall incorporate the memorandum in the minutes. The executive  
52 director, senior managers, and board members are also required  
53 to file such disclosures with the Commission on Ethics and the  
54 Office of Insurance Regulation. The executive director of the  
55 association or his or her designee shall notify each existing  
56 and newly appointed member of the board of directors and senior  
57 managers of his or her duty to comply with the reporting  
58 requirements of part III of chapter 112. At least quarterly, the  
59 executive director or his or her designee shall submit to the  
60 Commission on Ethics a list of names of the members of the board  
61 of directors and senior managers who are subject to the public  
62 disclosure requirements under s. 112.3145.

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



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69           (4) An employee or board member who fails to comply with  
70 subsection (2) or (3) is subject to penalties provided under ss.  
71 112.317 and 112.3173.

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

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

82           766.315 Florida Birth-Related Neurological Injury  
83 Compensation Association; board of directors.—

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

91           (c) The President of the Senate and the Speaker of the  
92 House of Representatives, alternating appointments as vacancies  
93 occur, shall appoint the directors, ensuring that the board  
94 represents the gender diversity of this state, ~~shall be~~  
95 appointed by the Chief Financial Officer as follows:

- 96           1. One citizen representative.  
97           2. One representative of participating physicians.



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- 98           3. One representative of hospitals.
- 99           4. One representative of casualty insurers.
- 100          5. One representative of physicians other than  
101 participating physicians.
- 102          6. One parent or legal guardian representative of an  
103 injured infant under the plan.
- 104          7. One representative of an advocacy organization for  
105 children with disabilities.
- 106          8. One representative who is a financial management expert  
107 with a fiduciary duty to clients.
- 108          9. One member in good standing of The Florida Bar who is  
109 not affiliated with any of the groups identified in  
110 subparagraphs 2.-8. and who has experience representing cases on  
111 behalf of children who have been injured in a health care  
112 setting. This director must not have represented anyone in legal  
113 matters against the association within the 2-year period  
114 immediately preceding appointment to the board and may not  
115 handle any legal matters against the association while serving  
116 as a director or within 2 years after leaving the board.
- 117          (2) (a) The President of the Senate or the Speaker of the  
118 House of Representatives, as applicable, ~~Chief Financial Officer~~  
119 may select the representative of the participating physicians  
120 from a list of at least three names recommended by the American  
121 Congress of Obstetricians and Gynecologists, District XII; the  
122 representative of hospitals from a list of at least three names  
123 recommended by the Florida Hospital Association; the  
124 representative of casualty insurers from a list of at least  
125 three names, one of which is recommended by the American  
126 Insurance Association, one of which is recommended by the



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127 Florida Insurance Council, and one of which is recommended by  
128 the Property Casualty Insurers Association of America; ~~and~~ the  
129 representative of physicians, other than participating  
130 physicians, from a list of three names recommended by the  
131 Florida Medical Association and a list of three names  
132 recommended by the Florida Osteopathic Medical Association; the  
133 parent or guardian of a child from a list of three names  
134 recommended by the Governor; the financial management expert  
135 from a list of three names recommended by the Governor; and the  
136 member of The Florida Bar from a list of three names recommended  
137 by the President of The Florida Bar. However, the President of  
138 the Senate or the Speaker of the House of Representatives, as  
139 applicable, ~~Chief Financial Officer~~ is not required to make an  
140 appointment from among the nominees of the respective  
141 associations. A participating physician who is named in a  
142 pending petition for a claim may not be appointed to the board.  
143 An appointed director who is a participating physician may not  
144 vote on any board matter relating to a claim accepted for an  
145 award for compensation if the physician was named in the  
146 petition for the claim.

147 (b) The President of the Senate or the Speaker of the House  
148 of Representatives, as applicable, ~~Chief Financial Officer~~ shall  
149 promptly notify the appropriate ~~medical~~ association or person  
150 identified in paragraph (a) who makes recommendations upon the  
151 occurrence of any vacancy, and like nominations may be made for  
152 the filling of the vacancy.

153 (c) The Governor, the President of the Senate, or the  
154 Speaker of the House of Representatives may remove a director  
155 from office for misconduct, malfeasance, misfeasance, or neglect



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156 of duty in office. Any vacancy so created shall be filled as  
157 provided in paragraph (a).

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

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

163 1. The board of directors shall employ an ombudsman who  
164 will serve at the pleasure of, and must report directly to, the  
165 board and who will act as an advocate for the parents and legal  
166 guardians of plan participants.

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

168 a. Provide information and assistance, outreach, and  
169 education to parents and legal guardians of plan participants  
170 regarding plan benefits and community, state, and federal  
171 government resources.

172 b. Investigate complaints of parents or legal guardians of  
173 plan participants regarding the operation of the plan.

174 c. Provide an annual report to the board regarding the  
175 ombudsman's activities, the disposition of complaints, and any  
176 recommendations to improve the operations of the plan and the  
177 delivery of benefits to participants.

178 (5)

179 (b) All meetings of the board of directors are subject to  
180 the requirements of s. 286.011, and all books, records, and  
181 audits of the plan are open to the public for reasonable  
182 inspection to the general public, except that a claim file in  
183 the possession of the association or its representative is  
184 confidential and exempt from the provisions of s. 119.07(1) and



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185 s. 24(a), Art. I of the State Constitution until termination of  
186 litigation or settlement of the claim, although medical records  
187 and other portions of the claim file may remain confidential and  
188 exempt as otherwise provided by law. Any book, record, document,  
189 audit, or asset acquired by, prepared for, or paid for by the  
190 association is subject to the authority of the board of  
191 directors, which is responsible therefor.

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

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

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

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

205 (d) Legislative recommendations to improve the program.

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

208 (f) For the initial report due on or before January 31,  
209 2022, an actuarial report conducted by an independent actuary  
210 that provides an analysis of the estimated costs of implementing  
211 the following changes to the plan:

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





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

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

220       Section 4. The Auditor General shall conduct an annual  
221 performance audit of the association and plan to evaluate  
222 management's performance in administering the laws, policies,  
223 and procedures governing the operations of the association and  
224 plan in an efficient and effective manner.

225       (1) The audit must include evaluations of all of the  
226 following:

227       (a) The protocols used for the payment of expenses,  
228 including standards for determining medical necessity and  
229 reasonableness of requests for medical care, services, or other  
230 benefits provided under the plan and the timeliness of the  
231 payment of expenses.

232       (b) The effectiveness of the association's outreach to  
233 inform parents and legal guardians of participants of available  
234 benefits and any changes in benefits and processes to resolve  
235 disputes regarding the payment of expenses internally.

236       (c) The efficacy of the current processes for the  
237 procurement of goods and services.

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

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

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

244 And the directory clause is amended as follows:

245 Delete lines 5 - 6

246 and insert:

247 Section 5. Present subsection (3) of section 766.31,  
248 Florida Statutes, is redesignated as subsection (5), a new  
249 subsection (3) and subsection (4) are added to that section, and  
250 subsections (1) and (2) are amended, to read:

251  
252 ===== T I T L E A M E N D M E N T =====

253 And the title is amended as follows:

254 Delete lines 355 - 366

255 and insert:

256 of directors; authorizing the Governor, the President  
257 of the Senate, or the Speaker of the House of  
258 Representatives to remove a director for specified  
259 conduct; requiring the board of directors to employ an  
260 ombudsman for a specified purpose; providing duties of  
261 the ombudsman; providing that meetings of the board of  
262 directors are subject to public meeting requirements;  
263 requiring the association to submit an annual report  
264 to the Governor and the Legislature by a specified  
265 date; providing requirements for the report; requiring  
266 the first report to include a certain actuarial  
267 report; providing requirements for the actuarial  
268 report; requiring the Auditor General to conduct an  
269 annual performance audit of the association and plan;  
270 providing requirements for the audit; requiring the  
271 Auditor General to release the audit and publish it on



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its website by a specified date each year;