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1 A bill to be entitled
2 An act relating to the Florida Birth-Related
3 Neurological Injury Compensation Plan; amending s.
4 11.45, F.S.; requiring the Auditor General to audit
5 the Florida Birth-Related Neurological Injury
6 Compensation Association at least once every 3 years;
7 providing requirements for such audit; amending s.
8 766.303, F.S.; requiring that the association
9 administer the Florida Birth-Related Neurological
10 Injury Compensation Plan in a manner that promotes and
11 protects the health and best interests of children
12 with birth-related neurological injuries; amending s.
13 766.31, F.S.; revising requirements for the award for
14 compensation for claims under the plan; authorizing
15 parents or legal guardians receiving benefits under
16 the plan to file a petition with the Division of
17 Administrative Hearings to dispute the denial or
18 amount of reimbursement of actual expenses; increasing
19 the amount that may be awarded to the parents or legal
20 guardians of an infant found to have sustained a
21 birth-related neurological injury; requiring that such
22 amount be increased annually; requiring the plan to
23 provide retroactive payments to certain parents or
24 legal guardians which are sufficient to bring the
25 total award to a specified amount; authorizing such
26 payments to be made in a lump sum or periodically;
27 requiring the plan to make such payments by a
28 specified date; increasing the death benefit for an
29 infant found to have sustained a birth-related

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30 neurological injury; requiring the plan to provide
31 retroactive payments to certain parents or legal
32 guardians which are sufficient to bring the total
33 death benefit award to a specified amount; authorizing
34 such payments to be made in a lump sum or
35 periodically; requiring the plan to make such payments
36 by a specified date; creating s. 766.3145, F.S.;
37 requiring association employees to annually sign and
38 submit a conflict-of-interest statement as a condition
39 of employment; requiring prospective employees to sign
40 and submit such statement as a condition of
41 employment; providing that the executive director,
42 senior managers, and members of the board of directors
43 are subject to specified provisions; prohibiting board
44 members from voting on measures under certain
45 circumstances; providing procedures and requirements
46 for board members who have a conflict of interest;
47 prohibiting employees and board members from accepting
48 gifts or expenditures from certain individuals and
49 entities; providing penalties; prohibiting certain
50 senior managers and executive directors from
51 representing persons or entities before the
52 association for a specified timeframe; amending s.
53 766.315, F.S.; revising the membership of the board of
54 directors of the association; prohibiting certain
55 appointed directors from voting on board matters
56 relating to a claim if they were named in the petition
57 for the claim; providing a term limit for directors;
58 revising the process for recommending new directors;

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59 authorizing removal of a director from office for
60 specified reasons; revising the powers of the
61 directors; providing that meetings of the board of
62 directors are subject to the public meetings and
63 records law; specifying notice and agenda requirements
64 for board meetings; requiring the association to
65 furnish a list of compensable expenses to parents and
66 legal guardians receiving benefits; requiring the
67 association to publish a report on its website by a
68 specified date annually; providing requirements for
69 such report; requiring the association to submit a
70 report to the Governor, Legislature, and Chief
71 Financial Officer by a specified date annually;
72 providing requirements for such report; providing
73 applicability; requiring the Agency for Health Care
74 Administration to conduct a review and provide certain
75 recommendations regarding Medicaid third-party
76 benefits payable by and recoverable from the plan;
77 requiring the agency to submit a report of its
78 findings to the Legislature and the Chief Financial
79 Officer by a specified date; providing an effective
80 date.

81
82 Be It Enacted by the Legislature of the State of Florida:

83
84 Section 1. Paragraph (n) is added to subsection (2) of
85 section 11.45, Florida Statutes, to read:

86 11.45 Definitions; duties; authorities; reports; rules.—

87 (2) DUTIES.—The Auditor General shall:

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88 (n) At least once every 3 years, conduct an operational
89 audit of the Florida Birth-Related Neurological Injury
90 Compensation Association. Each operational audit shall include,
91 at a minimum, an assessment of compliance with ss. 766.303-
92 766.315, and compliance with the public records and public
93 meetings laws of this state. The first operational audit must be
94 completed by August 15, 2021.

95

96 The Auditor General shall perform his or her duties
97 independently but under the general policies established by the
98 Legislative Auditing Committee. This subsection does not limit
99 the Auditor General's discretionary authority to conduct other
100 audits or engagements of governmental entities as authorized in
101 subsection (3).

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

104 766.303 Florida Birth-Related Neurological Injury
105 Compensation Plan; exclusiveness of remedy.—

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

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

111 766.31 Administrative law judge awards for birth-related
112 neurological injuries; notice of award.—

113 (1) Upon determining that an infant has sustained a birth-
114 related neurological injury and that obstetrical services were
115 delivered by a participating physician at the birth, the
116 administrative law judge shall make an award providing

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117 compensation for the following items relative to such injury:

118 (a) Actual expenses for medically necessary and reasonable
119 medical and hospital, habilitative and training, family
120 residential or custodial care, professional residential, and
121 custodial care and service, for medically necessary drugs,
122 special equipment, and facilities, and for related travel. At a
123 minimum, compensation must be provided for the following actual
124 expenses:

125 1. A total annual benefit of up to \$10,000 for immediate
126 family members who reside with the infant for psychotherapeutic
127 services obtained from providers licensed under chapter 490 or
128 chapter 491.

129 2. For the life of the child, providing parents or legal
130 guardians with a reliable method of transportation for the care
131 of the child or reimbursing the cost of upgrading an existing
132 vehicle to accommodate the child's needs when it becomes
133 medically necessary for wheelchair transportation. The mode of
134 transportation must take into account the special accommodations
135 required for the specific child. The plan may not limit such
136 transportation assistance based on the child's age or weight.
137 The plan must replace any vans purchased by the plan every 7
138 years or 150,000 miles, whichever comes first.

139 3. Housing assistance of up to \$100,000 for the life of the
140 child, including home construction and modification costs.

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

143 1. Expenses for items or services that the infant has
144 received, or is entitled to receive, under the laws of any state
145 or the Federal Government, except to the extent such exclusion

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146 may be prohibited by federal law.

147 2. Expenses for items or services that the infant has
148 received, or is contractually entitled to receive, from any
149 prepaid health plan, health maintenance organization, or other
150 private insuring entity.

151 3. Expenses for which the infant has received
152 reimbursement, or for which the infant is entitled to receive
153 reimbursement, under the laws of any state or the Federal
154 Government, except to the extent such exclusion may be
155 prohibited by federal law.

156 4. Expenses for which the infant has received
157 reimbursement, or for which the infant is contractually entitled
158 to receive reimbursement, pursuant to the provisions of any
159 health or sickness insurance policy or other private insurance
160 program.

161 (c) Expenses included under ~~this~~ paragraph (a) are ~~shall be~~
162 limited to reasonable charges prevailing in the same community
163 for similar treatment of injured persons when such treatment is
164 paid for by the injured person. The parents or legal guardians
165 receiving benefits under the plan may file a petition with the
166 Division of Administrative Hearings to dispute the amount of
167 actual expenses reimbursed or a denial of reimbursement.

168 (d) 1.a. (b) 1. Periodic payments of an award to the parents
169 or legal guardians of the infant found to have sustained a
170 birth-related neurological injury, which award may ~~shall~~ not
171 exceed \$100,000. However, at the discretion of the
172 administrative law judge, such award may be made in a lump sum.
173 Beginning on January 1, 2021, the award may not exceed \$250,000,
174 and each January 1 thereafter, the maximum award authorized

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175 under this paragraph shall increase by 3 percent.

176 b. Parents or legal guardians who received an award
177 pursuant to this section before January 1, 2021, and whose child
178 currently receives benefits under the plan must receive a
179 retroactive payment in an amount sufficient to bring the total
180 award paid to the parents or legal guardians pursuant to sub-
181 subparagraph a. to \$250,000. This additional payment may be made
182 in a lump sum or in periodic payments as designated by the
183 parents or legal guardians and must be paid by July 1, 2021.

184 2.a. Death benefit for the infant in an amount of \$50,000.

185 b. Parents or legal guardians who received an award
186 pursuant to this section, and whose child died since the
187 inception of the program, must receive a retroactive payment in
188 an amount sufficient to bring the total award paid to the
189 parents or legal guardians pursuant to sub-subparagraph a. to
190 \$50,000. This additional payment may be made in a lump sum or in
191 periodic payments as designated by the parents or legal
192 guardians and must be paid by July 1, 2021 ~~\$10,000.~~

193 Section 4. Section 766.3145, Florida Statutes, is created
194 to read:

195 766.3145 Code of ethics.—

196 (1) On or before July 1 of each year, employees of the
197 association must sign and submit a statement attesting that they
198 do not have a conflict of interest as defined in part III of
199 chapter 112. As a condition of employment, all prospective
200 employees must sign and submit to the association a conflict-of-
201 interest statement.

202 (2) The executive director, senior managers, and members of
203 the board of directors are subject to the code of ethics under

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204 part III of chapter 112. For purposes of applying part III of
205 chapter 112 to activities of the executive director, senior
206 managers, and members of the board of directors, those persons
207 are considered public officers or employees and the association
208 is considered their agency. A board member may not vote on any
209 measure that would inure to his or her special private gain or
210 loss and, notwithstanding s. 112.3143(2), may not vote on any
211 measure that he or she knows would inure to the special private
212 gain or loss of any principal by whom he or she is retained or
213 to the parent organization or subsidiary of a corporate
214 principal by which he or she is retained, other than an agency
215 as defined in s. 112.312; or that he or she knows would inure to
216 the special private gain or loss of a relative or business
217 associate of the public officer. Before the vote is taken, such
218 member shall publicly state to the board the nature of his or
219 her interest in the matter from which he or she is abstaining
220 from voting and, within 15 days after the vote occurs, disclose
221 the nature of his or her interest as a public record in a
222 memorandum filed with the person responsible for recording the
223 minutes of the meeting, who shall incorporate the memorandum in
224 the minutes.

225 (3) Notwithstanding s. 112.3148, s. 112.3149, or any other
226 law, an employee or board member may not knowingly accept,
227 directly or indirectly, any gift or expenditure from a person or
228 entity, or an employee or representative of such person or
229 entity, which has a contractual relationship with the
230 association or which is under consideration for a contract.

231 (4) An employee or board member who fails to comply with
232 subsection (2) or subsection (3) is subject to penalties

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233 provided under ss. 112.317 and 112.3173.

234 (5) Any senior manager or executive director of the
235 association who is employed on or after January 1, 2022,
236 regardless of the date of hire, who subsequently retires or
237 terminates employment is prohibited from representing another
238 person or entity before the association for 2 years after
239 retirement or termination of employment from the association.

240 Section 5. Section 766.315, Florida Statutes, is amended to
241 read:

242 766.315 Florida Birth-Related Neurological Injury
243 Compensation Association; board of directors; notice of
244 meetings; report.—

245 (1) (a) The Florida Birth-Related Neurological Injury
246 Compensation Plan shall be governed by a board of seven ~~five~~
247 directors which shall be known as the Florida Birth-Related
248 Neurological Injury Compensation Association. The association is
249 not a state agency, board, or commission. Notwithstanding the
250 provision of s. 15.03, the association is authorized to use the
251 state seal.

252 (b) The directors shall be appointed for staggered terms of
253 3 years or until their successors are appointed and have
254 qualified; however, a director may not serve for more than 6
255 consecutive years.

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

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

260 2. One representative of participating physicians.

261 3. One representative of hospitals.

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262 4. One representative of casualty insurers.

263 5. One representative of physicians other than
264 participating physicians.

265 6. One parent or legal guardian representative of an
266 injured infant under the plan.

267 7. One representative of an advocacy organization for
268 children with disabilities.

269 (2) (a) The Chief Financial Officer may select the
270 representative of the participating physicians from a list of at
271 least three names recommended by the American Congress of
272 Obstetricians and Gynecologists, District XII; the
273 representative of hospitals from a list of at least three names
274 recommended by the Florida Hospital Association; the
275 representative of casualty insurers from a list of at least
276 three names, one of which is recommended by the American
277 Insurance Association, one of which is recommended by the
278 Florida Insurance Council, and one of which is recommended by
279 the Property Casualty Insurers Association of America; and the
280 representative of physicians, other than participating
281 physicians, from a list of three names recommended by the
282 Florida Medical Association and a list of three names
283 recommended by the Florida Osteopathic Medical Association.
284 However, the Chief Financial Officer is not required to make an
285 appointment from among the nominees of the respective
286 associations. A participating physician who is named in a
287 pending petition for a claim may not be appointed to the board.
288 An appointed director who is a participating physician may not
289 vote on any board matter relating to a claim accepted for an
290 award for compensation if the physician is named in the petition

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291 for the claim.

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

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

301 (3) The directors may ~~shall~~ not transact any business or
302 exercise any power of the plan except upon the affirmative vote
303 of four ~~three~~ directors. The directors shall serve without
304 salary, but are entitled to receive reimbursement ~~each director~~
305 ~~shall be reimbursed~~ for actual and necessary expenses incurred
306 in the performance of his or her official duties as a director
307 of the plan in accordance with s. 112.061. The directors are
308 ~~shall not be~~ subject to any liability with respect to the
309 administration of the plan.

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

311 (a) Administer the plan.

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

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

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

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

318 (f) Sue and be sued, and appear and defend, in all actions
319 and proceedings in its name to the same extent as a natural

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320 person.

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

323 (h) Enter into such contracts as are necessary or proper to
324 administer the plan.

325 (i) Employ or retain such persons as are necessary to
326 perform the administrative and financial transactions and
327 responsibilities of the plan and to perform other necessary and
328 proper functions not prohibited by law.

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

331 (k) Indemnify any employee, agent, member of the board of
332 directors or alternate thereof, or person acting on behalf of
333 the plan in an official capacity, for expenses, including
334 attorney ~~attorney's~~ fees, judgments, fines, and amounts paid in
335 settlement actually and reasonably incurred in connection with
336 any action, suit, or proceeding, including any appeal thereof,
337 arising out of such person's capacity to act ~~acting~~ on behalf of
338 the plan, ~~if, provided that~~ such person acted in good faith and
339 in a manner he or she reasonably believed to be in, or not
340 opposed to, the best interests of the plan and the health and
341 best interest of the child having birth-related neurological
342 injuries, and ~~if provided that,~~ with respect to any criminal
343 action or proceeding, such ~~the~~ person had reasonable cause to
344 believe his or her conduct was lawful.

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

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

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349 audits of the plan are open to the public for reasonable
350 inspection ~~to the general public~~, except that a claim file in
351 the possession of the association or its representative is
352 confidential and exempt from the provisions of s. 119.07(1) and
353 s. 24(a), Art. I of the State Constitution until termination of
354 litigation or settlement of the claim, although medical records
355 and other portions of the claim file may remain confidential and
356 exempt as otherwise provided by law. Any book, record, document,
357 audit, or asset acquired by, prepared for, or paid for by the
358 association is subject to the authority of the board of
359 directors, which is responsible therefor.

360 (c) Except in the case of emergency meetings, the
361 association shall give notice of any board meeting by
362 publication on the association's website not fewer than 7 days
363 before the meeting. The association shall prepare an agenda in
364 time to ensure that a copy of the agenda may be received at
365 least 7 days before the meeting by any person who requests a
366 copy and who pays the reasonable cost of the copy. The agenda,
367 along with any meeting materials available in electronic form,
368 excluding confidential and exempt information, shall be
369 published on the association's website. The agenda shall contain
370 the items to be considered in order of presentation and a
371 telephone number for members of the public to participate
372 telephonically at the board meeting. After the agenda has been
373 made available, a change shall be made only for good cause, as
374 determined by the person designated to preside, and must be
375 stated in the record. Notification of such change shall be at
376 the earliest practicable time.

377 (d) Each person authorized to receive deposits, issue

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378 vouchers, or withdraw or otherwise disburse any funds shall post
379 a blanket fidelity bond in an amount reasonably sufficient to
380 protect plan assets, as determined by the plan of operation. The
381 cost of such bond will be paid from the assets of the plan.

382 (e) ~~(d)~~ Annually, the association shall furnish audited
383 financial reports to any plan participant upon request, to the
384 Office of Insurance Regulation of the Financial Services
385 Commission, and to the Joint Legislative Auditing Committee. The
386 reports must be prepared in accordance with accepted accounting
387 procedures and must include such information as may be required
388 by the Office of Insurance Regulation or the Joint Legislative
389 Auditing Committee. At any time determined to be necessary, the
390 Office of Insurance Regulation or the Joint Legislative Auditing
391 Committee may conduct an audit of the plan.

392 (f) ~~(e)~~ Funds held on behalf of the plan are funds of the
393 State of Florida. The association may only invest plan funds in
394 the investments and securities described in s. 215.47, and shall
395 be subject to the limitations on investments contained in that
396 section. All income derived from such investments will be
397 credited to the plan. The State Board of Administration may
398 invest and reinvest funds held on behalf of the plan in
399 accordance with the trust agreement approved by the association
400 and the State Board of Administration and within the provisions
401 of ss. 215.44-215.53.

402 (6) The association shall furnish annually to each parent
403 and legal guardian receiving benefits under the plan either by
404 mail or electronically a list of expenses compensable under the
405 plan.

406 (7) The association shall publish a report on its website

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407 by January 1, 2022, and every January 1 thereafter. The report
408 shall include:

409 (a) The names and terms of each board member and executive
410 staff member.

411 (b) The amount of compensation paid to each association
412 employee.

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

414 (d) A list of expenditures for attorney fees and lobbying
415 fees.

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

419 (8) On or before November 1, 2021, and by each November 1
420 thereafter, the association shall submit a report to the
421 Governor, the President of the Senate, the Speaker of the House
422 of Representatives, and the Chief Financial Officer. The report
423 must include:

424 (a) The number of petitions filed for compensation with the
425 division, the number of claimants awarded compensation, the
426 number of claimants denied compensation, and the reasons for the
427 denial of compensation.

428 (b) The number and dollar amount of paid and denied
429 compensation for expenses by category and the reasons for any
430 denied compensation for expenses by category.

431 (c) The average turnaround time for paying or denying
432 compensation for expenses.

433 (d) Legislative recommendations to improve the program.

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

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

438 (g) For the initial report due on or before November 1,
439 2021, an actuarial report conducted by an independent actuary
440 which provides an analysis of the estimated costs of
441 implementing the following changes to the plan:

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

444 2. Revising the eligibility for participation in the plan
445 by providing that an infant must be permanently and
446 substantially mentally or physically impaired, rather than
447 permanently and substantially mentally and physically impaired.

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

450 Section 6. The amendments made to s. 766.31, Florida
451 Statutes, by this act, apply to petitions pending or filed under
452 s. 766.305, Florida Statutes, on or after January 1, 2021.
453 However, s. 766.31(1)(d)1.b. and 2.b., Florida Statutes, as
454 created by this act, apply retroactively.

455 Section 7. The Agency for Health Care Administration must
456 review its Medicaid third-party liability functions and rights
457 under s. 409.910, Florida Statutes, relative to the Florida
458 Birth-Related Neurological Injury Compensation Plan established
459 under s. 766.303, Florida Statutes, and must include in its
460 review the extent and value of the liabilities owed by the plan
461 as a third-party benefit provider. Based on its findings, the
462 agency shall provide recommendations regarding the development
463 of policies and procedures to ensure robust implementation of
464 agency functions and rights relative to the primacy of the

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465 plan's third-party benefits payable under s. 766.31(1)(a)1. and
466 3., Florida Statutes, and recoveries due the agency under s.
467 409.910, Florida Statutes. On or before November 1, 2021, the
468 agency must submit to the President of the Senate, the Speaker
469 of the House of Representatives, and the Chief Financial Officer
470 a report of its findings regarding the extent and value of the
471 liabilities owed by the plan.

472 Section 8. This act shall take effect upon becoming a law.