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1  
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 paragraph 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.