

By Senator Book

32-00875A-22

20221050__

1 A bill to be entitled
2 An act relating to the Florida Birth-Related
3 Neurological Injury Compensation Plan; amending s.
4 766.301, F.S.; revising legislative intent; amending
5 s. 766.302, F.S.; revising the definition of the term
6 “family residential or custodial care”; amending s.
7 766.303, F.S.; providing that the plan is not intended
8 to serve as the payor of last resort for services
9 under the plan; prohibiting the Florida Birth-Related
10 Neurological Injury Compensation Association from
11 holding itself out as such; amending s. 766.31, F.S.;
12 revising requirements for the award of compensation
13 for claims under the plan; requiring the plan to
14 provide specified additional annual payments to
15 parents or legal guardians of children covered under
16 the plan; authorizing the plan to make such payments
17 in a lump sum or periodically as designated by
18 eligible parents or guardians; revising eligibility
19 requirements for certain retroactive payments to
20 parents or legal guardians; requiring that awards
21 include specified payments for legal costs associated
22 with establishing a guardianship for a child under the
23 plan who is 18 years of age or older; providing
24 retroactive applicability; requiring the plan to make
25 certain retroactive payments to eligible parents or
26 guardians; authorizing the plan to make such payments
27 in a lump sum or periodically as designated by
28 eligible parents or legal guardians; requiring the
29 plan to make the payments by a specified date;

32-00875A-22

20221050__

30 amending s. 766.315, F.S.; providing that contracts
31 entered into by the association to administer the plan
32 are subject to ch. 287, F.S., relating to state
33 procurement of personal property and services;
34 providing an effective date.

35
36 Be It Enacted by the Legislature of the State of Florida:

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38 Section 1. Subsection (2) of section 766.301, Florida
39 Statutes, is amended to read:

40 766.301 Legislative findings and intent.—

41 (2) It is the intent of the Legislature to provide
42 compensation, on a no-fault basis, for a limited class of
43 catastrophic injuries that result in unusually high costs for
44 custodial care and rehabilitation. This plan applies ~~shall apply~~
45 only to birth-related neurological injuries and is not intended
46 to serve as the payor of last resort for claims arising out of
47 such injuries.

48 Section 2. Subsection (10) of section 766.302, Florida
49 Statutes, is amended to read:

50 766.302 Definitions; ss. 766.301-766.316.—As used in ss.
51 766.301-766.316, the term:

52 (10) "Family residential or custodial care" means care
53 normally rendered by trained professional attendants which is
54 beyond the scope of child care duties, but which is provided by
55 family members. Family members who provide nonprofessional
56 residential or custodial care may not be compensated under this
57 act for care that falls within the scope of child care duties
58 and other services normally and gratuitously provided by family

32-00875A-22

20221050__

59 members. Family residential or custodial care must ~~shall~~ be
60 performed only at the direction and control of a physician when
61 such care is medically necessary. Reasonable charges for
62 expenses for family residential or custodial care provided by a
63 family member are ~~shall be~~ determined as follows:

64 (a) If the family member is not employed, the per-hour
65 value equals the federal minimum hourly wage.

66 (b) If the family member is employed and elects to leave
67 that employment to provide such care, the per-hour value of that
68 care shall equal the rates established by Medicaid for private
69 duty services provided by a home health aide. ~~A family member or
70 a combination of family members providing care in accordance
71 with this definition may not be compensated for more than a
72 total of 10 hours per day.~~ Family care is in lieu of
73 professional residential or custodial care, and ~~no~~ professional
74 residential or custodial care may not be awarded for the period
75 of time during the day that family care is being provided.

76 (c) The award of family residential or custodial care as
77 defined in this section may ~~shall~~ not be included in the current
78 estimates for purposes of s. 766.314(9)(c).

79 Section 3. Present subsection (4) of section 766.303,
80 Florida Statutes, is redesignated as subsection (5), and a new
81 subsection (4) is added to that section, to read:

82 766.303 Florida Birth-Related Neurological Injury
83 Compensation Plan; exclusiveness of remedy.—

84 (4) The plan is not intended to serve as the payor of last
85 resort, and the association may not hold itself out as such.

86 Section 4. Paragraphs (a) and (d) of subsection (1) of
87 section 766.31, Florida Statutes, are amended, and paragraph (f)

32-00875A-22

20221050__

88 is added to that subsection, to read:

89 766.31 Administrative law judge awards for birth-related
90 neurological injuries; notice of award.—

91 (1) Upon determining that an infant has sustained a birth-
92 related neurological injury and that obstetrical services were
93 delivered by a participating physician at the birth, the
94 administrative law judge shall make an award providing
95 compensation for the following items relative to such injury:

96 (a) Actual expenses for medically necessary and reasonable
97 medical, dental, and hospital care; ~~habilitative services~~ and
98 training; ~~family residential or custodial care~~; ~~professional~~
99 residential ~~and custodial care and service~~; therapeutic
100 services; ~~for~~ medically necessary drugs, special equipment, and
101 facilities; ~~and for~~ related travel. At a minimum, compensation
102 must be provided for the following actual expenses:

103 1. A total annual benefit of up to \$10,000 for immediate
104 family members who reside with the infant for psychotherapeutic
105 services obtained from providers licensed under chapter 458,
106 chapter 459, chapter 490, or chapter 491. In the event of the
107 infant's death, the plan must continue to provide the total
108 annual benefit to immediate family members who resided with the
109 infant for up to 12 months after the infant's death.

110 2. For the life of the child, providing parents or legal
111 guardians with a reliable method of transportation for the care
112 of the child or reimbursing the cost of upgrading an existing
113 vehicle to accommodate the child's needs when it becomes
114 medically necessary for wheelchair transportation. The mode of
115 transportation must take into account the special accommodations
116 required for the specific child. The plan may not limit such

32-00875A-22

20221050__

117 transportation assistance based on the child's age or weight.
118 The plan must replace any vans purchased by the plan every 7
119 years or 150,000 miles, whichever comes first.

120 3. Housing assistance of up to \$100,000 for the life of the
121 child, including home construction and modification costs. The
122 plan shall provide up to an additional \$30,000 to cover costs
123 for devices that will ensure continuous light, heat, and power
124 in the home for the care of the child, including, but not
125 limited to, a generator or another alternative power source.
126 Out-of-pocket expenses incurred by the parent or legal guardian
127 before July 1, 2022, for home construction or modification or
128 devices covered under this subparagraph are eligible for
129 reimbursement in accordance with the applicable maximum
130 expenditure limit.

131 4. Compensation for residential or custodial care provided
132 by a family member or combination of family members to the child
133 under the plan. Such compensation must be paid at the same rate
134 the plan pays for such services when provided by a contracted
135 provider. The plan may not limit the hours a family member or
136 combination of family members may be compensated for providing
137 residential or custodial care if such care is deemed medically
138 necessary.

139 (d)1.a. Periodic payments or, at the discretion of the
140 administrative law judge, a lump sum payment of an award to the
141 parents or legal guardians of the infant found to have sustained
142 a birth-related neurological injury, which award may not exceed
143 \$100,000. ~~However, at the discretion of the administrative law~~
144 ~~judge, such award may be made in a lump sum.~~ Beginning on
145 January 1, 2021, the award may not exceed \$250,000, adjusted and

32-00875A-22

20221050__

146 each January 1 thereafter to increase, the maximum award
147 authorized under this paragraph ~~shall increase~~ by 3 percent.
148 With each 3 percent increase, parents or legal guardians who
149 received an award before the increase and whose child currently
150 receives benefits under the plan must receive an additional
151 payment in an amount equal to the 3 percent increase. This
152 additional payment may be made in a lump sum or in periodic
153 payments as designated by the parents or legal guardians.

154 b. Parents or legal guardians who received an award
155 pursuant to this section before January 1, 2021, ~~and whose child~~
156 ~~currently receives benefits under the plan~~ must receive a
157 retroactive payment in an amount sufficient to bring the total
158 award paid to the parents or legal guardians pursuant to sub-
159 subparagraph a. to \$250,000. This additional payment may be made
160 in a lump sum or in periodic payments as designated by the
161 parents or legal guardians and must be paid by July 1, 2021.

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

163 b. Parents or legal guardians who received an award
164 pursuant to this section, and whose child died since the
165 inception of the program, must receive a retroactive payment in
166 an amount sufficient to bring the total award paid to the
167 parents or legal guardians pursuant to sub-subparagraph a. to
168 \$50,000. This additional payment may be made in a lump sum or in
169 periodic payments as designated by the parents or legal
170 guardians and must be paid by July 1, 2021.

171 (f) Payment of up to \$10,000 for legal costs associated
172 with establishing a guardianship for a child under the plan who
173 is 18 years of age or older.

32-00875A-22

20221050__

175 Should there be a final determination of compensability, and the
176 claimants accept an award under this section, the claimants are
177 ~~shall not be~~ liable for any expenses, including attorney
178 ~~attorney's~~ fees, incurred in connection with the filing of a
179 claim under ss. 766.301-766.316 other than those expenses
180 awarded under this section.

181 Section 5. The amendments made to s. 766.31(1)(a) and
182 (d)1., Florida Statutes, by this act apply retroactively. The
183 Florida Birth-Related Neurological Injury Compensation Plan must
184 provide the additional payment required under s.
185 766.31(1)(d)1.b., Florida Statutes, to parents and legal
186 guardians who are eligible for the additional payment under that
187 sub-subparagraph as a result of the amendment made by this act.
188 The additional payment may be made in a lump sum or in periodic
189 payments as designated by the parents or legal guardians and
190 must be paid by July 1, 2022.

191 Section 6. Paragraph (h) of subsection (4) of section
192 766.315, Florida Statutes, is amended to read:

193 766.315 Florida Birth-Related Neurological Injury
194 Compensation Association; board of directors; notice of
195 meetings; report.-

196 (4) The board of directors has the power to:

197 (h) Enter into such contracts as are necessary or proper to
198 administer the plan, subject to the requirements of chapter 287.

199 Section 7. This act shall take effect upon becoming a law.