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LEGISLATIVE ACTION

Senate

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House

The Committee on Appropriations (Book) recommended the following:

1 **Senate Amendment to Amendment (754030) (with title**
2 **amendment)**

3
4 Delete lines 5 - 190
5 and insert:

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

8 766.301 Legislative findings and intent.—

9 (2) It is the intent of the Legislature to provide
10 compensation, on a no-fault basis, for a limited class of



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11 catastrophic injuries that result in unusually high costs for
12 custodial care and rehabilitation. This plan shall apply only to
13 birth-related neurological injuries and is not intended to serve
14 as the payor of last resort for claims arising out of such
15 injuries. It is not the intent of the Legislature to shield
16 physicians who engage in willful misconduct, gross negligence,
17 or recklessness or to preclude individuals from filing
18 legitimate claims of medical malpractice against such
19 physicians.

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

22 766.303 Florida Birth-Related Neurological Injury
23 Compensation Plan; exclusiveness of remedy.—

24 (4) The Florida Birth-Related Neurological Injury
25 Compensation Association shall administer the plan in a manner
26 that promotes and protects the health and best interests of
27 children with birth-related neurological injuries who have been
28 accepted into the plan, and the association shall strive to
29 ensure that all of their medically reasonable needs are being
30 met.

31 Section 3. Subsection (5) of section 766.305, Florida
32 Statutes, is amended to read:

33 766.305 Filing of claims and responses; medical
34 disciplinary review.—

35 (5) Upon receipt of such petition, the Division of Medical
36 Quality Assurance shall review the information therein and
37 determine whether it involved conduct by a physician licensed
38 under chapter 458 or an osteopathic physician licensed under
39 chapter 459 which ~~that~~ is subject to disciplinary action. If a



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40 physician is involved in more than one filed claim, the division
41 also must review the circumstances of all such claims together
42 to determine whether the physician's conduct establishes a
43 pattern of practice subject to disciplinary action. Section
44 456.073 applies in such cases, ~~in which case the provisions of~~
45 ~~s. 456.073 shall apply.~~

46 Section 4. Section 766.313, Florida Statutes, is amended to
47 read:

48 766.313 Limitation on claim.—Any claim for compensation
49 under ss. 766.301-766.316 which ~~that~~ is filed more than 8 ~~5~~
50 years after the birth of an infant alleged to have a birth-
51 related neurological injury is ~~shall be~~ barred.

52 Section 5. Section 766.3135, Florida Statutes, is created
53 to read:

54 766.3135 Plan services.—

55 (1) Pursuant to an award under s. 766.31(1), the
56 association is responsible for reimbursement of actual expenses
57 for medically necessary and reasonable services for a child
58 under the plan. The plan is not intended to serve as the payor
59 of last resort and the association may not hold itself out as
60 such.

61 (a) The association must reimburse the parents or legal
62 guardians of a child under the plan for any service, drug,
63 equipment, or treatment at a reasonable rate if they submit a
64 letter of medical necessity from the child's physician or other
65 treating health care provider for such service, drug, equipment,
66 or treatment.

67 (b) The association may establish an independent review
68 process that uses medical experts to review such requests after



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69 reimbursement to determine whether the physician's or health
70 care provider's determination of medical necessity was
71 reasonable. If the review finds that such determination was not
72 reasonable, the association may ask the parents or legal
73 guardians to provide a letter of medical necessity from a second
74 health care provider. If such letter is provided, the
75 association may not take further action. If the parents or legal
76 guardians are unable to provide a second letter, the association
77 may debit the reimbursement from future reimbursements.

78 (c) For experimental treatments, therapies, or programs,
79 the parents or legal guardians of the child must submit a report
80 of medical necessity from the physician or other health care
81 provider which details the medical necessity for the
82 experimental treatment, therapy, or program and provides proof
83 that it has shown objective, observable, and demonstrable
84 medical benefits to other patients similarly situated to the
85 child under the plan. The association may use its review process
86 established under paragraph (b) to conclude whether the report
87 reasonably supports the determination of medical necessity. If
88 the review finds that such determination is not reasonable, the
89 association may require the parents or legal guardians to
90 provide a second report from a different health care provider.
91 If such report is provided, the association must reimburse the
92 parents or legal guardians for the experimental treatment,
93 therapy, or program, as applicable. If the parents or legal
94 guardians are unable to provide a second report, the association
95 is not required to provide reimbursement.

96 (2) Parents or legal guardians of a child under the plan
97 are eligible for reimbursement of expenses for any of the



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98 following, at a minimum:

99 (a) Medical, dental, and hospital care; habilitative
100 services and training; mental health services; music or art
101 therapy; family residential or custodial care; and professional
102 residential and custodial care and services. Reimbursement for
103 private nursing staff or attendant care under this paragraph
104 must be provided at a rate at least equal to the state or
105 federal minimum wage, whichever is greater, and must be
106 reimbursed at the same rate regardless of the setting in which
107 the care is provided.

108 (b) Medically necessary drugs, special equipment, and
109 facilities.

110 (c) Family support services for immediate family members
111 living with the child, including, but not limited to, mental
112 health services.

113 (d) Travel expenses related to the child's care. The
114 association may not limit the amount or type of travel which may
115 be reimbursed or differentiate reimbursement rates based on the
116 purpose of such travel, provided that it is related to the
117 child's care.

118 (e) Entertainment and other promotion of the child's mental
119 and emotional well-being. The parents or legal guardians of the
120 child are entitled to a reimbursement of at least \$1,500 per
121 year under this paragraph.

122 (f) Nutrition and hygiene needs of the child. The
123 association may not limit reimbursement for diapers, baby food,
124 or formula if such items are appropriate for the child's age or
125 developmental stage.

126 (3) The association is also responsible for the following:



127 (a) Providing ongoing transportation assistance for the
128 life of the child. The association must provide parents or legal
129 guardians with a reliable method of transportation for the care
130 of the child or reimburse the cost of upgrading an existing
131 vehicle to accommodate the child's needs. The mode of
132 transportation must take into account the special accommodations
133 required for the specific child. The association may not limit
134 such transportation assistance based on the child's age or
135 weight.

136 (b) Providing ongoing housing assistance for the life of
137 the child. Such assistance includes, but is not limited to:

138 1. Payment assistance for rent and utilities to cover the
139 cost of any increase due to the accommodation of the child's
140 condition and medical needs.

141 2. Reimbursement of moving costs.

142 3. Payment assistance for home construction costs up to
143 \$100,000.

144 (c) Establishing an online network portal for parents and
145 legal guardians of children under the plan to support one
146 another and exchange information and resources. Access to the
147 online network must be provided at no cost to parents and legal
148 guardians.

149 Section 6. Paragraph (a) of subsection (5) of section
150 766.314, Florida Statutes, is amended to read:

151 766.314 Assessments; plan of operation.—

152 (5) (a) Beginning January 1, 1990, the persons and entities
153 listed in paragraphs (4) (b) and (c), except those persons or
154 entities who are specifically excluded from said provisions, as
155 of the date determined in accordance with the plan of operation,



156 taking into account persons licensed subsequent to the payment
157 of the initial assessment, shall pay an annual assessment in the
158 amount equal to the initial assessments provided in paragraphs
159 (4) (b) and (c). If payment of the annual assessment by a
160 physician is received by the association by January 31 of any
161 calendar year, the physician shall qualify as a participating
162 physician for that entire calendar year. If the payment is
163 received after January 31 of any calendar year, the physician
164 shall qualify as a participating physician for that calendar
165 year only from the date the payment was received by the
166 association. Beginning on January 1, 2022, and on each January 1
167 thereafter, the annual assessment shall increase by 3 percent.
168 On January 1, 1991, and on each January 1 thereafter, the
169 association shall determine the amount of additional assessments
170 necessary pursuant to subsection (7), in the manner required by
171 the plan of operation, subject to any increase determined to be
172 necessary by the Office of Insurance Regulation pursuant to
173 paragraph (7) (b). On July 1, 1991, and on each July 1
174 thereafter, the persons and entities listed in paragraphs (4) (b)
175 and (c), except those persons or entities who are specifically
176 excluded from said provisions, shall pay the additional
177 assessments which were determined on January 1. Beginning
178 January 1, 1990, the entities listed in paragraph (4) (a),
179 including those licensed on or after October 1, 1988, shall pay
180 an annual assessment of \$50 per infant delivered during the
181 prior calendar year. The additional assessments which were
182 determined on January 1, 1991, pursuant to ~~the provisions of~~
183 subsection (7) are ~~shall~~ not ~~be~~ due and payable by the entities
184 listed in paragraph (4) (a) until July 1.



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185 Section 7. Subsections (1) and (2) of section 766.31,
186 Florida Statutes, are amended to read:
187 766.31 Administrative law judge awards for birth-related
188 neurological injuries; notice of award.—
189 (1) Upon determining that an infant has sustained a birth-
190 related neurological injury and that obstetrical services were
191 delivered by a participating physician at the birth, the
192 administrative law judge shall make an award providing
193 compensation for the following items relative to such injury:
194 (a) Actual expenses for medically necessary and reasonable
195 medical and hospital, habilitative and training, family
196 residential or custodial care, professional residential, and
197 custodial care and service, for medically necessary drugs,
198 special equipment, and facilities, and for related travel. At a
199 minimum, compensation must be provided for the following actual
200 expenses:
201 1. Diapers and baby formula for the infant from the time of
202 birth and pureed baby food or other baby food for the infant at
203 the appropriate age or developmental stage.
204 2. A total annual benefit of up to \$5,000 for immediate
205 family members who reside with the infant for psychotherapeutic
206 services obtained from providers licensed under chapter 490 or
207 chapter 491.
208 3. Transportation reimbursement for all necessary trips to
209 the pharmacy each month for prescription fills for the infant.
210 (b) However, the following expenses are not subject to
211 compensation ~~such expenses shall not include:~~
212 1. Expenses for items or services that the infant has
213 received, or is entitled to receive, under the laws of any state



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214 or the Federal Government, except to the extent such exclusion
215 may be prohibited by federal law.

216 2. Expenses for items or services that the infant has
217 received, or is contractually entitled to receive, from any
218 prepaid health plan, health maintenance organization, or other
219 private insuring entity.

220 3. Expenses for which the infant has received
221 reimbursement, or for which the infant is entitled to receive
222 reimbursement, under the laws of any state or the Federal
223 Government, except to the extent such exclusion may be
224 prohibited by federal law.

225 4. Expenses for which the infant has received
226 reimbursement, or for which the infant is contractually entitled
227 to receive reimbursement, pursuant to the provisions of any
228 health or sickness insurance policy or other private insurance
229 program.

230 (c) Expenses included under ~~this~~ paragraph (a) may not
231 exceed ~~shall be limited to~~ reasonable charges prevailing in the
232 same community for similar treatment of injured persons when
233 such treatment is paid for by the injured person.

234 (d)1.a. ~~(b)1.~~ Periodic payments of an award to the parents
235 or legal guardians of the infant found to have sustained a
236 birth-related neurological injury, which award may ~~shall~~ not
237 exceed \$100,000. However, at the discretion of the
238 administrative law judge, such award may be made in a lump sum.
239 Beginning on January 1, 2021, the award may not exceed \$250,000,
240 and each January 1 thereafter the maximum award authorized under
241 this paragraph shall increase by 3 percent.

242 b. Parents or legal guardians who received an award



243 pursuant to this section before January 1, 2021, and whose child
244 currently receives benefits under the plan must receive a
245 retroactive payment in an amount sufficient to bring the total
246 award paid to the parents or legal guardians pursuant to sub-
247 subparagraph a. to \$250,000. This additional payment may be made
248 in a lump sum or in periodic payments as designated by the
249 parents or legal guardians.

250 2. Death benefit for the infant in an amount of \$50,000
251 ~~\$10,000~~.

252 (e)~~(e)~~ Reasonable expenses incurred in connection with the
253 filing of a claim under ss. 766.301-766.316, including
254 reasonable attorney ~~attorney's~~ fees, which are shall be subject
255 to the approval and award of the administrative law judge. In
256 determining an award for attorney's fees, the administrative law
257 judge shall consider the following factors:

258 1. The time and labor required, the novelty and difficulty
259 of the questions involved, and the skill requisite to perform
260 the legal services properly.

261 2. The fee customarily charged in the locality for similar
262 legal services.

263 3. The time limitations imposed by the claimant or the
264 circumstances.

265 4. The nature and length of the professional relationship
266 with the claimant.

267 5. The experience, reputation, and ability of the lawyer or
268 lawyers performing services.

269 6. The contingency or certainty of a fee.

270
271 Should there be a final determination of compensability, and the



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272 claimants accept an award under this section, the claimants are
273 ~~shall not be~~ liable for any expenses, including attorney
274 ~~attorney's~~ fees, incurred in connection with the filing of a
275 claim under ss. 766.301-766.316 other than those expenses
276 awarded under this section.

277 (2) The award shall require the immediate payment of
278 expenses previously incurred and shall require that future
279 expenses be paid as incurred.

280 (a) Within 20 days after the receipt of a request for
281 payment of expenses, the plan must pay the expenses or notify
282 the parents or legal guardians, or their designee, that specific
283 additional information or documentation is needed to evaluate
284 the request or that the request for payment of the expenses is
285 being denied.

286 (b) Parents or legal guardians, or their designee, must
287 submit any additional information or documentation requested by
288 the plan within 35 days after receipt of the notification by the
289 plan that additional information or documentation is needed.
290 Additional information is considered submitted on the date it is
291 mailed or electronically submitted to the plan.

292 (c) A request for payment of expenses must be paid or
293 denied within 90 days after receipt of the request. Failure to
294 pay or deny the claim within 120 days after receipt of the
295 request creates an uncontestable obligation to pay the expenses.

296 Section 8. Section 766.3145, Florida Statutes, is created
297 to read:

298 766.3145 Code of ethics.—

299 (1) On or before July 1 of each year, employees of the
300 association must sign and submit a statement attesting that they



301 do not have a conflict of interest as defined in part III of
302 chapter 112. As a condition of employment, all prospective
303 employees must sign and submit to the association a conflict-of-
304 interest statement.

305 (2) The executive director, the ombudsman, senior managers,
306 and members of the board of directors are subject to part III of
307 chapter 112, including, but not limited to, the code of ethics
308 and the public disclosure and reporting of financial interests
309 requirements of s. 112.3145. For purposes of applying part III
310 of chapter 112 to activities of the executive director, senior
311 managers, and members of the board of directors, those persons
312 are considered public officers or employees and the association
313 is considered their agency. A board member may not vote on any
314 measure that would inure to his or her special private gain or
315 loss and, notwithstanding s. 112.3143(2), may not vote on any
316 measure that he or she knows would inure to the special private
317 gain or loss of any principal by whom he or she is retained or
318 to the parent organization or subsidiary of a corporate
319 principal by which he or she is retained, other than an agency
320 as defined in s. 112.312; or that he or she knows would inure to
321 the special private gain or loss of a relative or business
322 associate of the public officer. Before the vote is taken, such
323 member shall publicly state to the board the nature of his or
324 her interest in the matter from which he or she is abstaining
325 from voting and, within 15 days after the vote occurs, disclose
326 the nature of his or her interest as a public record in a
327 memorandum filed with the person responsible for recording the
328 minutes of the meeting, who shall incorporate the memorandum in
329 the minutes. The executive director, senior managers, and board



330 members are also required to file such disclosures with the
331 Commission on Ethics and the Office of Insurance Regulation. The
332 executive director of the association or his or her designee
333 shall notify each existing and newly appointed member of the
334 board of directors and senior managers of his or her duty to
335 comply with the reporting requirements of part III of chapter
336 112. At least quarterly, the executive director or his or her
337 designee shall submit to the Commission on Ethics a list of
338 names of the members of the board of directors and senior
339 managers who are subject to the public disclosure requirements
340 under s. 112.3145.

341 (3) Notwithstanding s. 112.3148, s. 112.3149, or any other
342 law, an employee or board member may not knowingly accept,
343 directly or indirectly, any gift or expenditure from a person or
344 entity, or an employee or representative of such person or
345 entity, which has a contractual relationship with the
346 association or which is under consideration for a contract.

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

350 (5) Any senior manager or executive director of the
351 association who is employed on or after January 1, 2022,
352 regardless of the date of hire, who subsequently retires or
353 terminates employment is prohibited from representing another
354 person or entity before the association for 2 years after
355 retirement or termination of employment from the association.

356 Section 9. Paragraphs (a) and (c) of subsection (1),
357 paragraph (a) of subsection (2), and paragraph (i) of subsection
358 (4) of section 766.315, Florida Statutes, are amended, and



359 subsection (6) is added to that section, to read:

360 766.315 Florida Birth-Related Neurological Injury
361 Compensation Association; board of directors.—

362 (1) (a) The Florida Birth-Related Neurological Injury
363 Compensation Plan shall be governed by a board of seven ~~five~~
364 directors which shall be known as the Florida Birth-Related
365 Neurological Injury Compensation Association. The association is
366 not a state agency, board, or commission. Notwithstanding ~~the~~
367 ~~provision of~~ s. 15.03, the association is authorized to use the
368 state seal.

369 (c) The Chief Financial Officer shall appoint the
370 directors, ensuring that at least one board member is a woman,
371 ~~shall be appointed by the Chief Financial Officer~~ as follows:

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

373 And the title is amended as follows:

374 Between lines 309 and 310
375 insert:

376 766.301, F.S.; revising legislative intent; amending
377 s. 766.303, F.S.; requiring the Florida Birth-Related
378 Neurological Injury Compensation Association to
379 administer the Florida Birth-Related Neurological
380 Injury Compensation Plan in a specified manner;
381 amending s. 766.305, F.S.; requiring the Division of
382 Medical Quality Assurance of the Department of Health
383 to review all claims under the plan involving a
384 particular physician together when making certain
385 determinations; amending s. 766.313, F.S.; revising
386 the timeframe within which birth-related neurological
387



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388 injury compensation claims must be filed; creating s.
389 766.3135, F.S.; providing that the Florida Birth-
390 Related Neurological Injury Compensation Association
391 is responsible for reimbursing parents and legal
392 guardians for actual expenses for medically necessary
393 and reasonable services for an injured child;
394 prohibiting the association from holding itself out as
395 the payor of last resort for services under the plan;
396 requiring the association to reimburse parents and
397 legal guardians for services, drugs, equipment, or
398 treatment if they provide a certain letter of medical
399 necessity; authorizing the association to establish a
400 review process for such reimbursements; requiring
401 parents and legal guardians to submit a certain report
402 to the association for reimbursement of experimental
403 treatments, therapies, or programs; authorizing the
404 association to use its review process to make certain
405 determinations regarding such reimbursements;
406 requiring the association to reimburse parents and
407 legal guardians for experimental treatments,
408 therapies, and programs under certain circumstances;
409 specifying expenses for which parents and legal
410 guardians are eligible to receive reimbursement;
411 providing duties for the association; amending s.
412 766.314, F.S.; beginning on a specified date,
413 requiring the annual assessments imposed on physicians
414 and certain entities participating in the plan to be
415 increased by a certain percentage annually; amending
416 s.