The Committee on Appropriations (Book) recommended the following:

Senate Amendment to Amendment (754030) (with title amendment)

Delete lines 5 - 190

and insert:

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

766.301 Legislative findings and intent.—

(2) It is the intent of the Legislature to provide compensation, on a no-fault basis, for a limited class of
catastrophic injuries that result in unusually high costs for custodial care and rehabilitation. This plan shall apply only to birth-related neurological injuries and is not intended to serve as the payor of last resort for claims arising out of such injuries. It is not the intent of the Legislature to shield physicians who engage in willful misconduct, gross negligence, or recklessness or to preclude individuals from filing legitimate claims of medical malpractice against such physicians.

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

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

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

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

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

(5) Upon receipt of such petition, the Division of Medical Quality Assurance shall review the information therein and determine whether it involved conduct by a physician licensed under chapter 458 or an osteopathic physician licensed under chapter 459 which is subject to disciplinary action. If a
physician is involved in more than one filed claim, the division
also must review the circumstances of all such claims together
to determine whether the physician’s conduct establishes a
pattern of practice subject to disciplinary action. Section
456.073 applies in such cases, in which case the provisions of
s. 456.073 shall apply.

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

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

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

766.3135 Plan services.—
(1) Pursuant to an award under s. 766.31(1), the
association is responsible for reimbursement of actual expenses
for medically necessary and reasonable services for a child
under the plan. The plan is not intended to serve as the payor
of last resort and the association may not hold itself out as
such.

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

(b) The association may establish an independent review
process that uses medical experts to review such requests after
reimbursement to determine whether the physician’s or health care provider’s determination of medical necessity was reasonable. If the review finds that such determination was not reasonable, the association may ask the parents or legal guardians to provide a letter of medical necessity from a second health care provider. If such letter is provided, the association may not take further action. If the parents or legal guardians are unable to provide a second letter, the association may debit the reimbursement from future reimbursements.

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

(2) Parents or legal guardians of a child under the plan are eligible for reimbursement of expenses for any of the
following, at a minimum:

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

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

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

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

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

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

(3) The association is also responsible for the following:
(a) Providing ongoing transportation assistance for the life of the child. The association must provide parents or legal guardians with a reliable method of transportation for the care of the child or reimburse the cost of upgrading an existing vehicle to accommodate the child’s needs. The mode of transportation must take into account the special accommodations required for the specific child. The association may not limit such transportation assistance based on the child’s age or weight.

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

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

2. Reimbursement of moving costs.

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

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

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

766.314 Assessments; plan of operation.—

(5)(a) Beginning January 1, 1990, the persons and entities listed in paragraphs (4)(b) and (c), except those persons or entities who are specifically excluded from said provisions, as of the date determined in accordance with the plan of operation,
taking into account persons licensed subsequent to the payment of the initial assessment, shall pay an annual assessment in the amount equal to the initial assessments provided in paragraphs (4)(b) and (c). If payment of the annual assessment by a physician is received by the association by January 31 of any calendar year, the physician shall qualify as a participating physician for that entire calendar year. If the payment is received after January 31 of any calendar year, the physician shall qualify as a participating physician for that calendar year only from the date the payment was received by the association. Beginning on January 1, 2022, and on each January 1 thereafter, the annual assessment shall increase by 3 percent.

On January 1, 1991, and on each January 1 thereafter, the association shall determine the amount of additional assessments necessary pursuant to subsection (7), in the manner required by the plan of operation, subject to any increase determined to be necessary by the Office of Insurance Regulation pursuant to paragraph (7)(b). On July 1, 1991, and on each July 1 thereafter, the persons and entities listed in paragraphs (4)(b) and (c), except those persons or entities who are specifically excluded from said provisions, shall pay the additional assessments which were determined on January 1. Beginning January 1, 1990, the entities listed in paragraph (4)(a), including those licensed on or after October 1, 1988, shall pay an annual assessment of $50 per infant delivered during the prior calendar year. The additional assessments which were determined on January 1, 1991, pursuant to the provisions of subsection (7) are not due and payable by the entities listed in paragraph (4)(a) until July 1.
Section 7. Subsections (1) and (2) of section 766.31, Florida Statutes, are amended to read:

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

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

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

1. Diapers and baby formula for the infant from the time of birth and pureed baby food or other baby food for the infant at the appropriate age or developmental stage.

2. A total annual benefit of up to $5,000 for immediate family members who reside with the infant for psychotherapeutic services obtained from providers licensed under chapter 490 or chapter 491.

3. Transportation reimbursement for all necessary trips to the pharmacy each month for prescription fills for the infant.

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

1. Expenses for items or services that the infant has received, or is entitled to receive, under the laws of any state
or the Federal Government, except to the extent such exclusion may be prohibited by federal law.

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

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

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

(c) Expenses included under this paragraph (a) may not exceed reasonable charges prevailing in the same community for similar treatment of injured persons when such treatment is paid for by the injured person.

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

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

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

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

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

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

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

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

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

6. The contingency or certainty of a fee.

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

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

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

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

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

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

766.3145 Code of ethics.—

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

(2) The executive director, the ombudsman, senior managers, and members of the board of directors are subject to part III of chapter 112, including, but not limited to, the code of ethics and the public disclosure and reporting of financial interests requirements of s. 112.3145. For purposes of applying part III of chapter 112 to activities of the executive director, senior managers, and members of the board of directors, those persons are considered public officers or employees and the association is considered their agency. A board member may not vote on any measure that would inure to his or her special private gain or loss and, notwithstanding s. 112.3143(2), may not vote on any measure that he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312; or that he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Before the vote is taken, such member shall publicly state to the board the nature of his or her interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes. The executive director, senior managers, and board
members are also required to file such disclosures with the Commission on Ethics and the Office of Insurance Regulation. The executive director of the association or his or her designee shall notify each existing and newly appointed member of the board of directors and senior managers of his or her duty to comply with the reporting requirements of part III of chapter 112. At least quarterly, the executive director or his or her designee shall submit to the Commission on Ethics a list of names of the members of the board of directors and senior managers who are subject to the public disclosure requirements under s. 112.3145.

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

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

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

Section 9. Paragraphs (a) and (c) of subsection (1), paragraph (a) of subsection (2), and paragraph (i) of subsection (4) of section 766.315, Florida Statutes, are amended, and
subsection (6) is added to that section, to read:

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

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

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

And the title is amended as follows:

Between lines 309 and 310

insert:

766.301, F.S.; revising legislative intent; amending s. 766.303, F.S.; requiring the Florida Birth-Related Neurological Injury Compensation Association to administer the Florida Birth-Related Neurological Injury Compensation Plan in a specified manner;
amending s. 766.305, F.S.; requiring the Division of Medical Quality Assurance of the Department of Health to review all claims under the plan involving a particular physician together when making certain determinations; amending s. 766.313, F.S.; revising the timeframe within which birth-related neurological
injury compensation claims must be filed; creating s. 766.3135, F.S.; providing that the Florida Birth-
Related Neurological Injury Compensation Association is responsible for reimbursing parents and legal
guardians for actual expenses for medically necessary and reasonable services for an injured child;
prohibiting the association from holding itself out as the payor of last resort for services under the plan;
requiring the association to reimburse parents and legal guardians for services, drugs, equipment, or treatment if they provide a certain letter of medical necessity; authorizing the association to establish a review process for such reimbursements; requiring parents and legal guardians to submit a certain report to the association for reimbursement of experimental treatments, therapies, or programs; authorizing the association to use its review process to make certain determinations regarding such reimbursements; requiring the association to reimburse parents and legal guardians for experimental treatments, therapies, and programs under certain circumstances; specifying expenses for which parents and legal guardians are eligible to receive reimbursement; providing duties for the association; amending s. 766.314, F.S.; beginning on a specified date, requiring the annual assessments imposed on physicians and certain entities participating in the plan to be increased by a certain percentage annually; amending s.