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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.
4 766.303, F.S.; requiring the Florida Birth-Related
5 Neurological Injury Compensation Association to
6 administer the Florida Birth-Related Neurological
7 Injury Compensation Plan in a specified manner;
8 amending s. 766.305, F.S.; requiring that, if a
9 physician is involved in more than one filed claim,
10 the Division of Medical Quality Assurance of the
11 Department of Health review all such claims together
12 when making certain determinations; providing
13 applicability; amending s. 766.31, F.S.; revising
14 requirements for the award for compensation for claims
15 under the plan; increasing the maximum amount that may
16 be awarded to the parents or legal guardians of an
17 infant found to have sustained a birth-related
18 neurological injury, as of a specified date; requiring
19 that the maximum award amount be increased by a
20 certain percentage annually; requiring the plan to
21 provide retroactive payments to certain parents or
22 legal guardians which are sufficient to bring the
23 total award to a specified amount; authorizing such
24 payments to be made in a lump sum or periodically;
25 increasing the amount of the death benefit that must
26 be awarded; requiring the plan to provide retroactive
27 payments to certain parents or legal guardians which
28 are sufficient to bring the total death benefit award
29 to a specified amount; authorizing such payments to be

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30 made in a lump sum or periodically; requiring parents
31 and legal guardians to submit a certain letter of
32 medical necessity to request reimbursement for actual
33 expenses; requiring the plan to act on a request for
34 reimbursement of expenses within a specified
35 timeframe; requiring the plan to notify the parents or
36 legal guardians and the ombudsman if specific
37 additional information or documentation is needed;
38 requiring the plan to consult with the ombudsman
39 before denying a request; requiring the plan to
40 provide a detailed written explanation of the reason
41 for a denial; requiring the plan to request a second
42 letter of medical necessity if it denies a request on
43 certain grounds; providing requirements for the second
44 letter of medical necessity; requiring the plan to
45 reimburse expenses if a second letter is provided;
46 providing that the plan is not required to reimburse
47 expenses if a second letter is not provided; requiring
48 parents or legal guardians, or their designee, to
49 submit any additional information or documentation
50 requested by the plan within a specified timeframe;
51 requiring the plan to pay or deny a request within a
52 specified timeframe; providing that failure to pay or
53 deny a request within a specified timeframe results in
54 an uncontestable obligation to reimburse the expenses;
55 amending s. 766.313, F.S.; revising the timeframe
56 within which birth-related neurological injury
57 compensation claims must be filed; creating s.
58 766.3145, F.S.; requiring association employees to

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59 annually sign and submit a conflict-of-interest
60 statement as a condition of employment; requiring
61 prospective employees to sign and submit such
62 statement as a condition of employment; providing that
63 the executive director, the ombudsman, senior
64 managers, and the board of directors are subject to
65 specified provisions; prohibiting board members from
66 voting on measures under certain circumstances;
67 providing procedures and requirements for board
68 members who have a conflict of interest; prohibiting
69 employees and board members from accepting gifts or
70 expenditures from certain individuals; providing
71 penalties; prohibiting certain senior managers and
72 executive directors from representing persons or
73 entities before the association for a specified
74 timeframe; amending s. 766.315, F.S.; revising
75 membership of the plan's board of directors;
76 prohibiting certain appointed directors from voting on
77 board matters relating to a claim if they were named
78 in the petition for the claim; requiring the board of
79 directors to employ an ombudsman for a specified
80 purpose; providing appointment and removal procedures
81 for the ombudsman; providing qualifications for and
82 duties of the ombudsman; requiring the association to
83 submit an annual report to the Governor, the
84 Legislature, and the Chief Financial Officer by a
85 specified date; providing requirements for the report;
86 requiring that the first report include a certain
87 actuarial report; providing requirements for the

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88 actuarial report; requiring the Auditor General to
89 conduct a performance audit of the association and
90 plan; providing requirements for the audit; requiring
91 the Auditor General to release the audit by a
92 specified date; providing applicability; requiring the
93 Agency for Health Care Administration to conduct a
94 certain review of its Medicaid third-party liability
95 functions and rights with respect to the plan;
96 requiring the agency to submit a report of its
97 findings to the Legislature and the Chief Financial
98 Officer by a specified date; providing an effective
99 date.

100
101 Be It Enacted by the Legislature of the State of Florida:

102
103 Section 1. Subsection (4) is added to section 766.303,
104 Florida Statutes, to read:

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

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

114 Section 2. Subsection (5) of section 766.305, Florida
115 Statutes, is amended to read:

116 766.305 Filing of claims and responses; medical

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117 disciplinary review.—

118 (5) Upon receipt of such petition, the Division of Medical
119 Quality Assurance shall review the information therein and
120 determine whether it involved conduct by a physician licensed
121 under chapter 458 or an osteopathic physician licensed under
122 chapter 459 which that is subject to disciplinary action. If a
123 physician is involved in more than one filed claim, the division
124 also must review the circumstances of all such claims together
125 to determine whether the physician's conduct establishes a
126 pattern of practice subject to disciplinary action. Section
127 456.073 applies in such cases, ~~in which case the provisions of~~
128 ~~s. 456.073 shall apply.~~

129 Section 3. Present subsection (3) of section 766.31,
130 Florida Statutes, is redesignated as subsection (4), a new
131 subsection (3) is added to that section, and subsections (1) and
132 (2) are amended, to read:

133 766.31 Administrative law judge awards for birth-related
134 neurological injuries; notice of award.—

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

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

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146 expenses:

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

150 2. A total annual benefit of up to \$10,000 for immediate
151 family members who reside with the infant for psychotherapeutic
152 services obtained from providers licensed under chapter 490 or
153 chapter 491.

154 3. Transportation-related assistance, including, but not
155 limited to, the following:

156 a. Reimbursement for all medically necessary trips,
157 including travel to the pharmacy each month to purchase the
158 child's prescription medications.

159 b. For the life of the child, providing parents or legal
160 guardians with a reliable method of transportation for the care
161 of the child or reimbursing the cost of upgrading an existing
162 vehicle to accommodate the child's needs when it becomes
163 medically necessary for wheelchair transportation. The mode of
164 transportation must take into account the special accommodations
165 required for the specific child. The plan may not limit such
166 transportation assistance based on the child's age or weight.
167 The plan must replace any vans purchased by the plan every 7
168 years or 150,000 miles, whichever comes first.

169 4. Housing assistance of up to \$100,000 for the lifetime of
170 the child, including home construction and modification costs.

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

173 1. Expenses for items or services that the infant has
174 received, or is entitled to receive, under the laws of any state

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

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

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

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

191 (c) Expenses included under this paragraph (a) may not
192 exceed usual and customary ~~shall be limited to reasonable~~
193 charges prevailing in the same community for similar treatment
194 of injured persons when such treatment is paid for by the
195 injured person.

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

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

212 2. Death benefit for the infant in an amount of \$50,000.
213 Parents or legal guardians who received an award pursuant to
214 this section, and whose child died since the inception of the
215 program, must receive a retroactive payment in an amount
216 sufficient to bring the total award paid to the parents or legal
217 guardians pursuant to this subparagraph to \$50,000. This
218 additional payment may be made in a lump sum or in periodic
219 payments as designated by the parents or legal guardians
220 \$10,000.

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

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

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

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

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233 circumstances.

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

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

238 6. The contingency or certainty of a fee.

239

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

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

249 (3) (a) To request reimbursement from the plan for actual
250 expenses, the parents or legal guardians of a child under the
251 plan must submit a letter of medical necessity to the plan from
252 the child's physician, who must be licensed under chapter 458 or
253 chapter 459 or, if the child resides in another state, must be
254 licensed under the laws of that state, or from another licensed
255 treating health care practitioner as defined in s. 456.001
256 requesting reimbursement of the medically necessary services,
257 drugs, equipment, or treatment. Within 20 days after the receipt
258 of a request for reimbursement of expenses, the plan must
259 reimburse the expenses or notify the parents or legal guardians
260 and the ombudsman appointed pursuant to s. 766.315(4) (i)1. that
261 specific additional information or documentation is needed to

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262 evaluate the request or that the request for payment of the
263 expenses is being denied. Before denying the request, the plan
264 must consult with the ombudsman concerning the request and any
265 relevant information concerning the child's unique needs. The
266 plan must provide the ombudsman with a detailed written
267 explanation for the proposed denial. If the plan denies the
268 request because it determines that the services or treatment
269 were not medically necessary, the plan must request the parents
270 or legal guardians to provide a letter of medical necessity from
271 a second licensed physician or health care provider who is not
272 affiliated with or does not have an investment interest, as
273 described in s. 456.053, with the first physician or health care
274 provider who provided the medical necessity letter. If such
275 letter is provided, the plan must reimburse the parents or legal
276 guardians for the actual expenses, including the expenses
277 associated with obtaining the second medical necessity letter
278 from a physician or other health care practitioner. If the
279 parents or legal guardians are unable to provide a second
280 letter, the plan is not required to reimburse the expenses.

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

287 (c) A request for reimbursement of expenses must be paid or
288 denied within 90 days after receipt of the request. A denial of
289 reimbursement by the plan must be accompanied by a detailed
290 written explanation of why the request was denied. Failure to

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291 pay or deny the request for reimbursement within 120 days after
292 receipt of the request creates an uncontestable obligation to
293 reimburse the expenses.

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

296 766.313 Limitation on claim.—Any claim for compensation
297 under ss. 766.301-766.316 which ~~that~~ is filed more than 8 ~~5~~
298 years after the birth of an infant alleged to have a birth-
299 related neurological injury is ~~shall be~~ barred.

300 Section 5. Section 766.3145, Florida Statutes, is created
301 to read:

302 766.3145 Code of ethics.—

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

309 (2) The executive director, the ombudsman, senior managers,
310 and members of the board of directors are subject to the code of
311 ethics under part III of chapter 112. For purposes of applying
312 part III of chapter 112 to activities of the executive director,
313 senior managers, and members of the board of directors, those
314 persons are considered public officers or employees and the
315 association is considered their agency. A board member may not
316 vote on any measure that would inure to his or her special
317 private gain or loss and, notwithstanding s. 112.3143(2), may
318 not vote on any measure that he or she knows would inure to the
319 special private gain or loss of any principal by whom he or she

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320 is retained or to the parent organization or subsidiary of a
321 corporate principal by which he or she is retained, other than
322 an agency as defined in s. 112.312; or that he or she knows
323 would inure to the special private gain or loss of a relative or
324 business associate of the public officer. Before the vote is
325 taken, such member shall publicly state to the board the nature
326 of his or her interest in the matter from which he or she is
327 abstaining from voting and, within 15 days after the vote
328 occurs, disclose the nature of his or her interest as a public
329 record in a memorandum filed with the person responsible for
330 recording the minutes of the meeting, who shall incorporate the
331 memorandum in the minutes.

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

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

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

347 Section 6. Paragraphs (a) and (c) of subsection (1),
348 paragraph (a) of subsection (2), and paragraph (i) of subsection

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349 (4) of section 766.315, Florida Statutes, are amended, and
350 subsection (6) is added to that section, to read:

351 766.315 Florida Birth-Related Neurological Injury
352 Compensation Association; board of directors.—

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

360 (c) The Chief Financial Officer shall appoint the directors
361 ~~shall be appointed by the Chief Financial Officer~~ as follows:

- 362 1. One citizen representative.
- 363 2. One representative of participating physicians.
- 364 3. One representative of hospitals.
- 365 4. One representative of casualty insurers.
- 366 5. One representative of physicians other than
367 participating physicians.

368 6. One parent or legal guardian representative of an
369 injured infant under the plan.

370 7. One representative of an advocacy organization for
371 children with disabilities.

372 (2) (a) The Chief Financial Officer may select the
373 representative of the participating physicians from a list of at
374 least three names recommended by the American Congress of
375 Obstetricians and Gynecologists, District XII; the
376 representative of hospitals from a list of at least three names
377 recommended by the Florida Hospital Association; the

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378 representative of casualty insurers from a list of at least
379 three names, one of which is recommended by the American
380 Insurance Association, one of which is recommended by the
381 Florida Insurance Council, and one of which is recommended by
382 the Property Casualty Insurers Association of America; and the
383 representative of physicians, other than participating
384 physicians, from a list of three names recommended by the
385 Florida Medical Association and a list of three names
386 recommended by the Florida Osteopathic Medical Association.
387 However, the Chief Financial Officer is not required to make an
388 appointment from among the nominees of the respective
389 associations. A participating physician who is named in a
390 pending petition for a claim may not be appointed to the board.
391 An appointed director who is a participating physician may not
392 vote on any board matter relating to a claim accepted for an
393 award for compensation if the physician was named in the
394 petition for the claim.

395 (4) The board of directors shall have the power to:

396 (i) Employ or retain such persons as are necessary to
397 perform the administrative and financial transactions and
398 responsibilities of the plan and to perform other necessary and
399 proper functions not prohibited by law.

400 1. The board of directors shall employ an ombudsman who
401 will serve at the pleasure of, and must report directly to, the
402 board and who will act as an advocate for the parents and legal
403 guardians of children under the plan. The board must appoint or
404 remove the ombudsman by a majority vote with at least four
405 affirmative votes, with the board member who is the parent or
406 legal guardian representative of an injured child under the plan

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407 and the board member who is a representative of an advocacy
408 organization for children with disabilities on the prevailing
409 side.

410 2. At a minimum, the person appointed as the ombudsman must
411 have at least 5 years of experience and employment in the field
412 of children with disabilities, which includes advocacy for
413 children with disabilities.

414 3. The ombudsman shall do all of the following:

415 a. Provide information and assistance, outreach, and
416 education to parents and legal guardians of children under the
417 plan regarding plan benefits; assist parents and legal guardians
418 in the resolution of benefit and payment disputes; and inform
419 parents and legal guardians regarding community, state, and
420 federal government resources.

421 b. Investigate complaints of parents or legal guardians of
422 children under the plan regarding the operation of the plan.

423 c. Provide an annual report to the board regarding the
424 ombudsman's activities, the disposition of complaints, and any
425 recommendations to improve the operations of the plan,
426 resolution of disputes, and the delivery of benefits to
427 participants.

428 (6) On or before November 1, 2021, and by each November 1
429 thereafter, the association shall submit an annual report to the
430 Governor, the President of the Senate, the Speaker of the House
431 of Representatives, and the Chief Financial Officer. The report
432 must include:

433 (a) The number of petitions filed for compensation with the
434 division, the number of claimants awarded compensation, the
435 number of claimants denied compensation, and the reasons for the

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436 denial of compensation.

437 (b) The number and dollar amount of paid and denied
438 compensation for expenses by category and the reasons for any
439 denied compensation for expenses by category.

440 (c) The average turnaround time for paying or denying
441 compensation for expenses.

442 (d) Legislative recommendations to improve the program.

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

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

447 (g) For the initial report due on or before November 1,
448 2021, an actuarial report conducted by an independent actuary
449 which provides an analysis of the estimated costs of
450 implementing the following changes to the plan:

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

453 2. Revising the eligibility for participation in the plan
454 by providing that an infant must be permanently and
455 substantially mentally or physically impaired, rather than
456 permanently and substantially mentally and physically impaired.

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

459 Section 7. The Auditor General shall conduct a performance
460 audit of the association and plan to evaluate management's
461 performance in administering the laws, policies, and procedures
462 governing the operations of the association and plan in an
463 efficient and effective manner.

464 (1) The audit must include evaluations of all of the

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465 following:

466 (a) The protocols used for the payment of expenses,
467 including standards for determining medical necessity and
468 reasonableness of requests for medical care, services, or other
469 benefits provided under the plan and the timeliness of the
470 payment of expenses.

471 (b) The effectiveness of the association's outreach to
472 inform parents and legal guardians of participants of available
473 benefits and any changes in benefits and processes to resolve
474 disputes regarding the payment of expenses internally.

475 (c) The efficacy of the current processes for the
476 procurement of goods and services.

477 (d) The internal controls of the plan and association.

478 (2) The Auditor General shall release the audit by January
479 15, 2022.

480 Section 8. The amendments made to s. 766.31(1)(d)1.a. and
481 2., Florida Statutes, by this act apply to all claims filed
482 under s. 766.305, Florida Statutes, for which an award was made
483 through entry of final order under s. 766.31(1), Florida
484 Statutes, on or after January 1, 2021.

485 Section 9. The Agency for Health Care Administration shall
486 review its Medicaid third-party liability functions and rights
487 under s. 409.910, Florida Statutes, relative to the Florida
488 Birth-Related Neurological Injury Compensation Plan established
489 under s. 766.303, Florida Statutes, and must include in its
490 review the extent and value of the liabilities owed by the plan
491 as a third-party benefit provider. On or before November 1,
492 2021, the agency must submit to the President of the Senate, the
493 Speaker of the House of Representatives, and the Chief Financial

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494 Officer a report of its findings regarding the extent and value
495 of the liabilities owed by the plan.

496 Section 10. This act shall take effect upon becoming a law.