

CHAPTER 98-113

Committee Substitute for Senate Bill No. 1070

An act relating to medical malpractice insurance; amending s. 766.301, F.S.; clarifying legislative intent; amending s. 766.304, F.S.; providing exclusive jurisdiction of administrative law judges in claims filed under ss. 766.301-766.316, F.S.; providing a limitation on bringing a civil action under certain circumstances; amending s. 766.315, F.S.; authorizing the association to invest plan funds only in investments and securities described in s. 215.47, F.S.; amending s. 766.316, F.S.; providing hospitals and physicians with alternative means of providing notices to obstetrical patients relating to the no-fault alternative for birth-related neurological injuries; prescribing conditions; providing for applicability of amendments; requiring the Auditor General to conduct a study of the effects of expanding eligibility for compensation under the plan; providing an effective date.

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

Section 1. Paragraph (d) of subsection (1) of Section 766.301, Florida Statutes, is amended to read:

766.301 Legislative findings and intent.—

(1) The Legislature makes the following findings:

(d) The costs of birth-related neurological injury claims are particularly high and warrant the establishment of a limited system of compensation irrespective of fault. The issue of whether such claims are covered by this act must be determined exclusively in an administrative proceeding.

Section 2. Section 766.304, Florida Statutes, is amended to read:

766.304 Administrative law judge to determine claims.—The administrative law judge shall hear and determine all claims filed pursuant to ss. 766.301-766.316 and shall exercise the full power and authority granted to her or him in chapter 120, as necessary, to carry out the purposes of such sections. The administrative law judge has exclusive jurisdiction to determine whether a claim filed under this act is compensable. No civil action may be brought until the determinations under s. 766.309 have been made by the administrative law judge. If the administrative law judge determines that the claimant is entitled to compensation from the association, no civil action may be brought or continued in violation of the exclusiveness of remedy provisions of s. 766.303. If it is determined that a claim filed under this act is not compensable, the doctrine of neither collateral estoppel nor res judicata shall prohibit the claimant from pursuing any and all civil remedies available under common law and statutory law. The findings of fact and conclusions of law of the administrative law judge shall not be admissible in any subsequent proceeding; however, the sworn testimony of any person and the exhibits introduced into evidence in the administrative

case are admissible as impeachment in any subsequent civil action only against a party to the administrative proceeding, subject to the Rules of Evidence. An action may not be brought under ss. 766.301-766.316 if the claimant recovers or final judgment is entered. The division may adopt rules to promote the efficient administration of, and to minimize the cost associated with, the prosecution of claims.

Section 3. Paragraph (e) of subsection (5) of section 766.315, Florida Statutes, is amended to read:

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

(5)

(e) Funds held on behalf of the plan are funds of this state, and the association may invest plan funds only in the investments and securities described in s. 215.47 and are subject to the limitations on investments contained in that section. Any funds held on behalf of the plan must be invested in interest-bearing investments by the association. All income derived from such investments will be credited to the plan.

Section 4. Section 766.316, Florida Statutes, is amended to read:

766.316 Notice to obstetrical patients of participation in the plan.—Each hospital with a participating physician on its staff and each participating physician, other than residents, assistant residents, and interns deemed to be participating physicians under s. 766.314(4)(c), under the Florida Birth-Related Neurological Injury Compensation Plan shall provide notice to the obstetrical patients ~~thereof~~ as to the limited no-fault alternative for birth-related neurological injuries. Such notice shall be provided on forms furnished by the association and shall include a clear and concise explanation of a patient's rights and limitations under the plan. The hospital or the participating physician may elect to have the patient sign a form acknowledging receipt of the notice form. Signature of the patient acknowledging receipt of the notice form raises a rebuttable presumption that the notice requirements of this section have been met. Notice need not be given to a patient when the patient has an emergency medical condition as defined in s. 395.002(8)(b) or when notice is not practicable.

Section 5. (1) The Auditor General shall conduct an analysis of the reserve adequacy and funding rates in order to determine the actuarial soundness of the Florida Birth-Related Neurological Injury Compensation Plan. The study shall include an evaluation of future medical costs for the existing plan claimants, including life expectancy evaluation, and utilization of appropriate discount rates based on annual funding for expected future losses, estimated annual cost to lower the birth weight to 2,000 grams or 1,800 grams, and the estimated cost for lowering the birth weight for multiple births. The Auditor General shall contract with an actuarial consulting firm that has never previously conducted an actuarial analysis of the NICA program.

(2) To assist the Auditor General in the development and performance of the actuarial analysis of the plan, a technical advisory group shall be appointed which shall be composed of the following members: one selected by the Florida Hospital Association representing general acute care hospitals; one selected by the Academy of Florida Trial Lawyers; one selected by the Florida League of Health Systems representing for-profit hospitals; one selected by the Association of Community Hospitals and Health Systems of Florida representing private not-for-profit hospitals; one selected by the Florida Obstetrical and Gynecological Society; one selected by the Physician Insurers Association of America who provides obstetrical medical malpractice insurance coverage in Florida; one medical malpractice insurer selected by the Florida Insurance Council; the Board of Regents Vice Chancellor of Health Affairs, or her or his designee; one property and casualty insurer selected by the Florida Association of Insurance Agents; the chairman of the Board of the Florida Birth-Related Neurological Injury Compensation Association, or his or her designee; and one selected by the Florida Medical Association who is a practicing neonatologist. The technical advisory group will assist the Auditor General in developing the specific elements to be studied as part of the actuarial analysis; review an interim report and provide feedback to the Auditor General; and provide a written response that will be included in the final report of the Auditor General.

(3) The Auditor General shall submit the required report to the President of the Senate and the Speaker of the House of Representatives and their designees by January 1, 1999.

Section 6. The amendments to sections 766.301 and 766.304, Florida Statutes, shall take effect July 1, 1998, and shall apply only to claims filed on or after that date and to that extent shall apply retroactively regardless of the date of birth.

Section 7. Amendments to section 766.316, Florida Statutes, shall take effect July 1, 1998, and shall apply only to causes of action accruing on or after that date.

Section 8. Except as otherwise provided in this act, this act shall take effect July 1, 1998.

Became a law without the Governor's approval May 22, 1998.

Filed in Office Secretary of State May 21, 1998.