

## **SUMMARY OF KEY PROVISIONS OF CS/CS/SB 1786 REGARDING NICA**

On April 30, 2021, the Florida Legislature passed CS for CS for SB 1786 which made substantial changes to the NICA program. The following summarizes the key changes made by the act. We anticipate that Governor DeSantis will sign the bill into law, but we will advise further as soon as the Governor receives and acts on the bill. Please let me know if you have any questions about any part of this legislation.

- The Auditor General shall, at least once every 3 years, conduct an operational audit of the Florida Birth-Related Neurological Injury Compensation Association. Each operational audit shall include, at a minimum, an assessment of compliance with ss. 766.303- 766.315, and compliance with the public records and public meetings laws of this state. The first operational audit must be completed by August 15, 2021.
  
- The association shall administer the plan in a manner that promotes and protects the health and best interests of children with birth-related neurological injuries.
  
- At a minimum, compensation must be provided for the following actual expenses:
  1. A total annual benefit of up to \$10,000 for immediate family members who reside with the infant for psychotherapeutic services obtained from providers licensed under chapter 490 or chapter 491.
  2. For the life of the child, providing parents or legal guardians with a reliable method of transportation for the care of the child or reimbursing the cost of upgrading an existing vehicle to accommodate the child's needs when it becomes medically necessary for wheelchair transportation. The mode of transportation must take into account the special accommodations required for the specific child. The plan may not limit such transportation assistance based on the child's age or weight. The plan must replace any vans purchased by the plan every 7 years or 150,000 miles, whichever comes first.
  3. Housing assistance of up to \$100,000 for the life of the child, including home construction and modification costs.
  
- The parents or legal guardians receiving benefits under the plan may file a petition with the Division of Administrative Hearings to dispute the amount of actual expenses reimbursed or a denial of reimbursement.
  
- Beginning on January 1, 2021, the parental award may not exceed \$250,000, and each January 1 thereafter, the maximum award authorized under this paragraph shall increase by 3 percent. 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 and must be paid by July 1, 2021.

- The death benefit for an infant has been increased to \$50,000. Parents or legal guardians who received an award, and whose child died since the inception of the program, must receive a retroactive payment in an amount sufficient to bring the total death benefit award paid to the parents or legal guardians to \$50,000. This additional payment may be made in a lump sum or in periodic payments as designated by the parents or legal guardians and must be paid by July 1, 2021.
- A code of ethics is created and requires that 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. The executive director, senior managers, and members of the board of directors are subject to the code of ethics under part III of chapter 112. 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.
- 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. 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.
- Directors are limited to no more than 6 consecutive years of service on the board.

- The board is increased to 7 members, with the addition of a parent or guardian of an injured infant under the plan, and a representative of an advocacy organization for children with disabilities. The citizen representative on the board may not be a representative of a participating physician, a hospital, a casualty insurer, a non-participating physician, a parent or guardian of an injured infant under the plan, or a representative of an advocacy organization for children with disabilities.
  
- A participating physician who is named in a pending petition for a claim may not be appointed to the board. An appointed director who is a participating physician may not vote on any board matter relating to a claim accepted for an award for compensation if the physician is named in the petition.
  
- The Governor or the Chief Financial Officer may remove a director from office for misconduct, malfeasance, misfeasance, or neglect of duty in office.
  
- All meetings of the board of directors are subject to the requirements of s. 286.011, (Florida's public records laws) and all books, records, and audits of the plan are open to the public for reasonable inspection to the general public, except that a claim file remains confidential.
  
- Except in the case of emergency meetings, the association shall give notice of any board meeting by publication on the association's website not fewer than 7 days before the meeting. The association shall prepare an agenda in time to ensure that a copy of the agenda may be received at least 7 days before the meeting by any person who requests a copy and who pays the reasonable cost of the copy. The agenda, along with any meeting materials available in electronic form, excluding confidential and exempt information, shall be published on the association's website. The agenda shall contain the items to be considered in order of presentation and a telephone number for members of the public to participate telephonically at the board meeting. After the agenda has been made available, a change shall be made only for good cause, as determined by the person designated to preside, and must be stated in the record. Notification of such change shall be at the earliest practicable time.
  
- The association shall furnish annually to each parent and legal guardian receiving benefits under the plan either by mail or electronically a list of expenses compensable under the plan.
  
- The association shall publish a report on its website by January 1, 2022, and every January 1 thereafter. The report shall include:
  - (a) The names and terms of each board member and executive staff member.
  - (b) The amount of compensation paid to each association employee.
  - (c) A summary of reimbursement disputes and resolutions.

(d) A list of expenditures for attorney fees and lobbying fees.

(e) Other expenses to oppose each plan claim. Any personal identifying information of the parent, legal guardian, or child 418 involved in the claim must be removed from this list. 419 (8)

- On or before November 1, 2021, and by each November 1 thereafter, the association shall submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Financial Officer. The report must include:
  - (a) The number of petitions filed for compensation with the division, the number of claimants awarded compensation, the number of claimants denied compensation, and the reasons for the denial of compensation.
  - (b) The number and dollar amount of paid and denied compensation for expenses by category and the reasons for any denied compensation for expenses by category.
  - (c) The average turnaround time for paying or denying compensation for expenses.
  - (d) Legislative recommendations to improve the program.
  - (e) A summary of any pending or resolved litigation during the year which affects the plan.
  - (f) The amount of compensation paid to each association employee or member of the board of directors.
  - (g) For the initial report due on or before November 1, 2021, an actuarial report conducted by an independent actuary which provides an analysis of the estimated costs of implementing the following changes to the plan:
    1. Reducing the minimum birth weight eligibility for a participant in the plan from 2,500 grams to 2,000 grams.
    2. Revising the eligibility for participation in the plan by providing that an infant must be permanently and substantially mentally or physically impaired, rather than permanently and substantially mentally and physically impaired.
    3. Increasing the annual special benefit or quality of life benefit from \$500 to \$2,500 per calendar year.
- The Agency for Health Care Administration must review its Medicaid third-party liability functions and rights under s. 409.910, Florida Statutes, relative to the Florida Birth-Related Neurological Injury Compensation Plan established under s. 766.303, Florida Statutes, and must include in its review the extent and value of the liabilities owed by the plan as a third-party benefit provider. Based on its findings, the agency shall provide recommendations regarding the development of policies and procedures to ensure robust implementation of agency functions and rights relative to the primacy of the plan's third-party benefits payable under s. 766.31(1)(a)1. and 3., Florida Statutes, and recoveries due the agency under s. 409.910, Florida Statutes. On or before November 1, 2021, the agency must submit to the President of the

Senate, the Speaker of the House of Representatives, and the Chief Financial Officer a report of its findings regarding the extent and value of the liabilities owed by the plan.