

**FLORIDA BIRTH-RELATED NEUROLOGICAL INJURY
COMPENSATION ASSOCIATION
BOARD MEETING AGENDA**

September 16, 2021
Video Conference Call Meeting

Regular Session: 1:00 pm

1. Call to Order and Welcome
2. Minutes.....A
3. Orientation
 - A. Board Powers and Responsibilities - *Steve Ecenia*.....B
 - B. Open Government and HIPAA Laws – *Michael Glazer*.....C
 - C. Ethics, Conflict of Interest – *Mark Herron*.....D
 - D. New Website – *Kenney Shipley*.....E
 - E. SB 1786 Review - *Steve Ecenia*.....F
 - F. Status of Implementation of SB 1786 - *Kenney Shipley*

Public Testimony

4. Benefit Review - *Kenney Shipley*
 - A. Lump Sum Payments
 - B. Death Benefit Payments
 - C. Psychotherapeutic Services
 - D. Housing and Construction
 - E. Reliable Transportation/Van

- Staff Recommendations for Benefit Changes.....G**
- Mortgage Payment under Housing and Construction
 - 24 hours in hospital parent reimbursement
 - Reliable Transportation - \$30,000

Vote on changes in benefits

5. Audits
 - A. Auditor General – *Josh Barrett*.....H
 - B. Consumer Advocate Family Survey – *Tasha Carter*.....I
 - C. Annual Financial – *Russell Perkins*.....J

Move to Executive Session to discuss litigation.

Return to Public Session

Next Meeting: October

Agenda Item # 2 (Tab A)

Minutes

MINUTES OF THE MEETING
THE FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY COMPENSATION ASSOCIATION

December 4, 2020
Virtual Meeting/Conference Call

The December 4, 2020 meeting of the Board of Directors of the Florida Birth-Related Neurological Injury Compensation Association was called to order by Charlie Lydecker.

Present and constituting a quorum were:

Charlie Lydecker
Samuel Wolf, D.O.
Robert White
Bryan Anderson
Steven Dukes, M.D.

Also present:

Kenney Shipley, NICA Executive Director
Tim Daughtry, NICA Deputy Director
Steve Ecenia, NICA General Counsel
Tana Story, NICA General Counsel's Office
Robert Ridenour, Office of Insurance Regulation
Janice Yecco, NICA Investment Consultant
Felicia Bennett, Wilshire Consulting
Mark Crawshaw, Madison Consulting
Matt Dufek, Kikoda
Jason White, Kikoda
Linda Nelson, NICA Computer Consultant
Nicole Marchand, BlackRock
Kana Daniel, MetLife
Daniel Chang, Miami Herald
Carol Marbin Miller, Miami Herald
Pierre Taylor, Miami Herald

The Chair asked for a motion to approve the minutes of the August 28, 2020 Board meeting.

A motion was made to approve the minutes as drafted. The motion passed unanimously.

Investments

Janice Yecco followed with a discussion of overall economic fundamentals as well as NICA's investment results.

While economic activity decreased during the second quarter of 2020, there was a significant rebound in the third quarter of an approximate annualized rate of 33%.

As of September 30, 2020, the NICA portfolio excluding cash had returned 4.64% for the quarter and 11.14% for the trailing twelve months. For the same period, the policy index had returned 4.23% for the quarter and 8.88% for the trailing twelve months.

The Fixed Income composite returned 2.23% underperformed the benchmark of 2.25% for the quarter. Sterling Capital was a positive contributor for the quarter. An underweight to Core Bonds had a positive impact as core bonds lagged the other fixed income segments in the composite. The Long Duration Credit Composite underperformed its benchmark. An overweight to Long Duration Credit, and underweights to High Yield and U.S. TIPS had a negative impact on active performance.

The U.S. Equity Composite returned 8.37% for the quarter underperforming the Russell 3000 index of 9.21% by 84 bps net of fees. Wellington and Panagora underperformed their respective benchmarks for the quarter. An underweight to U.S. Large Cap, which was the best performing size segment, was also a negative contributor.

The Non-U.S. Equity composite returned 10.16% net of fees and outperformed the its MSCI ACWI ex U.S. benchmark return of 6.25% by 391 bps. This composite is entirely actively managed. Both managers in this space, Baillie Gifford and Schroders, were positive contributors.

Total Market value of the fund increased by \$155 million over the last 12 months ending September 30, 2020. The NICA portfolio ended the quarter with an overweight to Equities and an underweight to Fixed Income and Cash.

The strong performance in equity markets had triggered rebalance of the portfolio. Funds were reallocated from Non US Equity to Core Bonds.

Revisions to Statement of Investment Policy

The SEC recently revamped its standards regarding who was a Qualified Institutional Buyer (QIB). Previously, NICA was not considered a QIB because it did not meet any of the very specific types of investors. Under the new standards, NICA would be considered a QIB. A revised Statement of Investment Policy was presented that removed the prohibition against the purchase of private securities requiring Qualified Institutional Buyer status. This would allow NICA's investment managers to purchase section 144A securities. A lengthy discussion of these types of securities followed.

Other recommended revisions to the Statement of Investment Policy:

In the Investment Structure section, remove “establishing an active risk budget for each asset class relative to the passive alternative.”

In the Diversification and Risk Controls section:

Clarification that the written investment guidelines refer specifically to guidelines contained within Investor Management Agreements.

Specific guidelines for fixed income and equity portfolios were removed from the Investment Policy Statement as these would be included in the Investment Manager Agreements.

In the Investment Manager Retention and Termination section:

The time period over which improvement or other resolution will occur for managers placed on the Watch List was revised from six months to six to twelve months.

A motion was made to approve the revisions of the Investment Policy Statement. The motion passed unanimously.

Felicia Bennett of Wilshire Consulting then presented the executive summary for the quarter ending September 30, 2020 and the investment manager Watch List as of September 30, 2020.

Charts were presented detailing the attribution of the investment results. Total value added charts showed that using active management had been the main driver of outperformance net of fees. In passive accounts, the manager value added percentage would be zero or slightly negative. A discussion followed regarding active versus passive management and which parts of the market benefit from each of these types of investments.

There was one manager on the Watch List, Panagora (since 3/31/2020). Panagora triggered Watch List status due to their 5 year performance being below benchmark. It was recommended that NICA continue to monitor this manager.

Minimum Wage Change

The Constitutional Amendment that was just passed increased the minimum wage to \$10/hour effective September 2021 and increases \$1 each year through 2026 to bring the minimum wage to \$15/hour after that.

NICA already pays \$10/hour to minimum wage caregivers.

The Executive Director recommended increasing the amount NICA pays as minimum wage to \$11/hour effective the first pay period after January 1, 2021 and increase it by \$1 each year until 2025 at the same time.

All other parents and caregivers are reimbursed at the Medicaid rate for the appropriate license level under the statute and will be increased automatically as Medicaid amends their reimbursement rate.

A motion was made to accept the Executive Director's recommendation and increase the amount NICA pays as minimum wage to \$11/hour effective the first pay period

after January 1, 2021 and increase it by \$1 each year until 2025 at the same time. The motion passed unanimously.

Reserve Evaluation and Threshold Calculation

Mark Crawshaw of Madison Consulting Group followed with the September 30, 2020 actuarial reserve evaluation and threshold calculation.

The assumptions regarding the interest discount rate and the rate of inflation in the reserve evaluation had not changed from prior analyses which reflected a 1.5% differential between the two.

A summary of claims payments and reserves for periods from September 30, 2016 through September 30, 2020 was presented along with a summary of projected ultimate accepted claim counts by birth year. For the quarter ending September 30, 2020, the reserve for loss and loss adjustment expenses had increased by \$13.8 million to \$952.8 million. The increase was attributed to an increase in the number of outstanding claims in the third quarter of 2020. No change was recommended to the risk margin reserve of \$75.5 million. The average reserve per outstanding count had remained relatively stable since September 30, 2016. Quarterly payments had increased due to increases in the number of claims. Additional charts were presented detailing the changes in the outstanding claims counts by quarter, the reported claim counts on a rolling year basis and the ratio of accepted claims to reported claims.

For the benefit of new board member, Dr. Wolf, the Chair asked Dr. Crawshaw to summarize the process of calculating reserves. The reserve process begins with case reserves estimates prepared by the NICA staff on a claim by claim basis in current dollars. The actuaries adjust these estimates for inflation and investment returns to calculate the present value of the case reserves. Additional actuarial estimates are calculated for reserves for Incurred But Not Reported (IBNR) claims and development of known claims. A reserve for Unallocated Loss Adjustment Expense (ULAE) is included which represents the cost to administer the claims.

A lengthy discussion followed regarding actual claims versus IBNR claims.

The Calculation of Threshold for Suspension of Claims as of September 30, 2020 was discussed. This calculation is a statutorily required test. Based on the analysis and test, NICA met the statutory requirement.

A motion was made to approve the September 30, 2020 actuarial reserve evaluation. The motion passed unanimously.

A motion was made to approve the September 30, 2020 Threshold Calculation. The motion passed unanimously.

Outreach

Ms. Shipley advised the Board that staff was working with Sachs Media on a major overhaul to the NICA website.

Legislation

As discussed at previous Board meetings, NICA has proposed an amendment to increase the parental award from \$100,000 to \$250,000 initially with an increase of 3% annually thereafter. NICA will continue to work to generate support for this legislation.

There being no further business before the Association, the meeting was adjourned.

DRAFT

Agenda Item # 3.A. (Tab B)

Board Powers and Responsibilities

Board of Directors

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

(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.

(b) The directors shall be appointed for staggered terms of 3 years or until their successors are appointed and have qualified; however, a director may not serve for more than 6 consecutive years.

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

1. One citizen representative who is not affiliated with any of the groups identified in subparagraphs 2.-7.
2. One representative of participating physicians.
3. One representative of hospitals.
4. One representative of casualty insurers.
5. One representative of physicians other than participating physicians.
6. One parent or legal guardian representative of an injured infant under the plan.
7. One representative of an advocacy organization for children with disabilities.

(2)(a) The Chief Financial Officer may select the representative of the participating physicians from a list of at least three names recommended by the American Congress of Obstetricians and Gynecologists, District XII; the representative of hospitals from a list of at least three names recommended by the Florida Hospital Association; the representative of casualty insurers from a list of at least three names, one of which is recommended by the American Insurance Association, one of which is recommended by the Florida Insurance Council, and one of which is recommended by the Property Casualty Insurers Association of America; and the representative of physicians, other than participating physicians, from a list of three names recommended by the Florida Medical Association and a list of three names recommended by the Florida Osteopathic Medical Association. However, the Chief Financial Officer is not required to make an appointment from among the nominees of the respective associations. 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 for the claim.

(b) If applicable, the Chief Financial Officer shall promptly notify the appropriate association or person identified in paragraph (a) to make recommendations upon the occurrence of any vacancy, and like nominations may be made for the filling of the vacancy.

(c) The Governor or the Chief Financial Officer may remove a director from office for misconduct, malfeasance, misfeasance, or neglect of duty in office. Any vacancy so created shall be filled as provided in paragraph (a).

(3) The directors may not transact any business or exercise any power of the plan except upon the affirmative vote of four directors. The directors shall serve without salary but are entitled to receive reimbursement for actual and necessary expenses incurred in the performance of his or her official duties as a director of the plan in accordance with s. 112.061. The directors are not subject to any liability with respect to the administration of the plan.

(4) The board of directors has the power to:

- (a) Administer the plan.
- (b) Administer the funds collected on behalf of the plan.

- (c) Administer the payment of claims on behalf of the plan.
 - (d) Direct the investment and reinvestment of any surplus funds over losses and expenses, if any investment income generated thereby remains credited to the plan.
 - (e) Reinsure the risks of the plan in whole or in part.
 - (f) Sue and be sued, and appear and defend, in all actions and proceedings in its name to the same extent as a natural person.
 - (g) Have and exercise all powers necessary or convenient to effect any or all of the purposes for which the plan is created.
 - (h) Enter into such contracts as are necessary or proper to administer the plan.
 - (i) Employ or retain such persons as are necessary to perform the administrative and financial transactions and responsibilities of the plan and to perform other necessary and proper functions not prohibited by law.
 - (j) Take such legal action as may be necessary to avoid payment of improper claims.
 - (k) Indemnify any employee, agent, member of the board of directors or alternate thereof, or person acting on behalf of the plan in an official capacity, for expenses, including attorney fees, judgments, fines, and amounts paid in settlement actually and reasonably incurred in connection with any action, suit, or proceeding, including any appeal thereof, arising out of such person's capacity to act on behalf of the plan, if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the plan and the health and best interest of the child having birth-related neurological injuries, and if, with respect to any criminal action or proceeding, such person had reasonable cause to believe his or her conduct was lawful.
- (5)(a) Money may be withdrawn on account of the plan only upon a voucher as authorized by the association.
- (b) All meetings of the board of directors are subject to the requirements of s. 286.011, and all books, records, and audits of the plan are open to the public for reasonable inspection, except that a claim file in the possession of the association or its representative is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution until termination of litigation or settlement of the claim, although medical records and other portions of the claim file may remain confidential and exempt as otherwise provided by law. Any book, record, document, audit, or asset acquired by, prepared for, or paid for by the association is subject to the authority of the board of directors, which is responsible therefor.
 - (c) 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.
 - (d) Each person authorized to receive deposits, issue vouchers, or withdraw or otherwise disburse any funds shall post a blanket fidelity bond in an amount reasonably sufficient to protect plan assets, as determined by the plan of operation. The cost of such bond will be paid from the assets of the plan.
 - (e) Annually, the association shall furnish audited financial reports to any plan participant upon request, to the Office of Insurance Regulation of the Financial Services Commission, and to the Joint Legislative Auditing Committee. The reports must be prepared in accordance with accepted accounting procedures and must include such information as may

be required by the Office of Insurance Regulation or the Joint Legislative Auditing Committee. At any time determined to be necessary, the Office of Insurance Regulation or the Joint Legislative Auditing Committee may conduct an audit of the plan.

(f) Funds held on behalf of the plan are funds of the State of Florida. The association may only invest plan funds in the investments and securities described in s. 215.47, and shall be subject to the limitations on investments contained in that section. All income derived from such investments will be credited to the plan. The State Board of Administration may invest and reinvest funds held on behalf of the plan in accordance with the trust agreement approved by the association and the State Board of Administration and within the provisions of ss. 215.44-215.53.

(6) 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.

(7) 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 involved in the claim must be removed from this list.

(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.

History.—s. 74, ch. 88-1; s. 40, ch. 88-277; s. 7, ch. 89-186; s. 2, ch. 94-85; s. 427, ch. 96-406; s. 1808, ch. 97-102; s. 3, ch. 98-113; s. 2, ch. 98-409; s. 1902, ch. 2003-261; s. 3, ch. 2006-8; s. 11, ch. 2014-103; s. 5, ch. 2021-134.

Agenda Item # 3.B. (Tab C)

**Open Government
and HIPAA Laws**

OVERVIEW OF OPEN GOVERNMENT AND HIPAA LAWS

Presentation to the Board of the Florida Birth-Related
Neurological Injury Compensation Association

Michael J. Glazer
Tallahassee, FL | 850-224-9115

AUSLEY | McMULLEN

SUNSHINE LAW

Florida's Government in the Sunshine Law provides a public right of access to governmental proceedings at both the state and local levels.

In the absence of a statutory exemption, it applies to any gathering of two or more members of the same board to discuss any matter which will foreseeably come before that board for action.

APPLICABILITY TO NICA

Legislation passed in 2021 makes it clear that meetings of the NICA Board are subject to the Sunshine Law

Section 766.315(5)(b), Fla. Stat. (2021)

BASIC SUNSHINE LAW PRINCIPLES

- Board members may not engage in private discussions with each other about board business, either in person or by telephoning, emailing, texting or any other type of electronic communication (i.e Facebook, blogs, chat rooms)
- All communications between board members regarding board business must occur at a properly noticed public meeting
- Private sidebar discussions about board business at a public meeting are not allowed

MESSENGER MODEL PROHIBITION

While an individual board member is not prohibited from discussing board business with staff or a non-board member, other persons may not be used as a liaison to communicate information between board members. For example, a board member cannot ask staff to poll the other board members to determine their views on a board issue.

STANDARD REQUIREMENTS

- Meetings of public boards or commissions must be open to the public
- Reasonable notice of such meetings must be provided; and
- Minutes of the meetings must be prepared and open to public inspection

Per the 2021 NICA Legislation, except for emergency meetings, notice of Board meetings must be posted on the NICA website at least 7 days in advance and the agenda (including meeting materials) must also be available, with exceptions, 7 days in advance.

SCOPE OF THE SUNSHINE LAW

- Only the Legislature may create an exemption from the Sunshine Law (by a two-thirds vote). Exemptions are strictly construed.
- An exemption from the Public Records Law does not allow a board to close a meeting. Instead, a specific exemption from the Sunshine Law is required.

This is important to remember if HIPAA-protected information is discussed at a Board meeting.

RECORDINGS

While boards may adopt reasonable rules and policies to ensure orderly conduct of meetings, the Sunshine law does not allow boards to ban nondisruptive videotaping, tape recording, or photography at public meetings.

PUBLIC COMMENT

The Sunshine Law provides, subject to listed exceptions, that boards must allow an opportunity for the public to be heard before the board takes official action on a proposition. The statute does not prohibit boards from “maintaining orderly conduct or proper decorum in a public meeting.”

Many boards set aside a specific time on their agendas for public comment, often at the beginning of the board meeting and prior to the time action is taken on agenda items.

CLOSED MEETING TO DISCUSS PENDING LITIGATION

- The general rule is that the discussions between the board and its attorney are open to the public.
- The attorney/client privilege does not create an exemption.
- So long as certain procedural requirements are strictly followed, closed meetings can be held between the attorney, the Board and the chief executive officer to discuss settlement negotiations or strategy sessions related to litigation expenditures in pending litigation.

PENALTIES

- Civil action
- Criminal penalties
- Suspension or removal from office

PUBLIC RECORDS LAW

Florida's Public Records Act, Chapter 119, Florida Statutes, provides a right of access to records of state and local governments as well as to records maintained by private entities acting on their behalf

If material falls within the definition of "public record" it must be disclosed to the public unless there is a statutory exemption

THE TERM “PUBLIC RECORDS” MEANS:

- a) All “documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software or other material, regardless of the physical form, characteristics, or means of transmission” (includes electronic communications like text messages, emails)
- b) Made or received pursuant to law or ordinance or in connection with the transaction of official business
- c) By any *agency* [including a private entity acting ‘on behalf of’ a public agency]
- d) Which are used to perpetuate, communicate, or formalize knowledge

NICA EXCEPTION

NICA's records are generally public "...except that a claim file in the possession of the association or its representative is confidential and exempt from the provisions of [the Public Records Laws] until termination of litigation or settlement of the claim, although medical records and other portions of the claim file may remain confidential and exempt as otherwise provided by law."

HIPAA

NICA maintains a large amount “protected health information” under HIPAA

HIPAA requirements will be discussed below

OBLIGATION TO MAINTAIN PUBLIC RECORDS

- The duty to disclose public records falls on every person who has custody
- Temporary possession does not always equate to “custody”
- However, for example, text messages on your phone that meet the definition of a public record are in your “custody”

RETENTION

All public records must be retained in accordance with retention schedules approved by the Department of State

Even exempt records must be retained

NICA has a detailed records retention policy

PENALTIES FOR NONCOMPLIANCE

A. Criminal penalties

B. Civil action

C. Attorney's fees

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 “HIPAA”

Congress Passed This Landmark Law To, Among Other Things, Protect The Privacy And Security Of Health Care Information

COVERED ENTITIES

HIPAA applies to three groups referred to as “Covered Entities”:

1. Health care providers
2. Health Plans
3. Health Care Clearinghouses

HEALTH PLANS

Seventeen different categories including “a high risk pool...under State law to provide health insurance coverage or comparable coverage to eligible individuals”

LIKE NICA

PROTECTED HEALTH INFORMATION

Protected Health Information (“PHI”) is “individually identifiable health information” maintained or transmitted in electronic media or in any other form or medium.

INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION

- Relates to past, present, or future physical or mental health or condition of an individual
- The provision of health care to an individual
- Past, present, or future payment for the provision of health care to an individual

That identifies the individual or there is a reasonable basis to believe could be used to identify the individual

INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION INDIVIDUALLY

Not just a person's name or photo

Includes 18 identifiers including:

- Geographical elements smaller than a state
- Dates of birth, death, hospital admission date, etc.
- Email address
- Social security number
- Medical record number
- Vehicle license plate
- Other unique characteristics (like a tattoo)

BUSINESS ASSOCIATES

HIPAA applies to “business associates” of covered entities, including persons or entities that perform certain services that requires them to access, create, receive, maintain or submit individually identifiable health information.

**HIPAA PROTECTIONS LAST
FOR 50 YEARS AFTER THE
PERSON DIES**

WHO CAN ACCESS PHI

Individuals and their authorized representatives

Only workforce members who need to know in order to perform their job duties

With various exceptions such as for treatment or when specifically authorized or when required by law, the disclosure of PHI should be the “minimum necessary” to accomplish the intended purpose

PERMITTED USES AND DISCLOSURES OF PHI

A covered entity is *permitted* to use PHI:

- For Treatment
- For Payment
- For Health Care Operations

REQUIRED USES AND DISCLOSURES OF PHI

A covered entity is *required* to disclose PHI:

- To the individual when requested
- To certain regulators including public health authorities
- Oversight agencies
- In response to properly issued subpoenas
- Law enforcement including agencies investigating abuse, neglect, domestic violence
- Other uses and disclosures required by law

AUTHORIZED USES AND DISCLOSURES

Disclosure is allowed when a covered entity is properly *authorized* to disclose PHI

POTENTIAL BREACHES

Suspected breaches of privacy must be reported to NICA immediately

How the breach is then handled depends on the nature and scope of the disclosure

POSSIBLE PENALTIES

- HIPAA is primarily enforced by the U.S. Department of Health and Human Services Office of Civil Rights
- State Attorneys General can also impose penalties
- Financial penalties can be imposed whether the breach was intentional or accidental

MEMORIAL HERMANN HEALTH SYSTEM

Memorial Hermann Health System in Texas properly reported a patient that presented an allegedly fraudulent ID card to law enforcement

However, Memorial used the patient's name in a press release

The name had already been widely reported

THE HEALTH SYSTEM WAS FINED: \$2.4 MILLION

SAFEGUARDS

Maintain adequate safeguards to protect any PHI in your possession

- Secure your computers
- Secure your telephones
- Secure—or do not create—paper records

DO NOT PUT PHI ON SOCIAL MEDIA

QUESTIONS?

Acknowledgement: Much of this presentation regarding the Sunshine and Public Records Law was derived from a program by Patricia Gleason, Special Counsel for Open Government in the Office of Attorney General Ashley Moody

Agenda Item # 3.C. (Tab D)

Ethics, Conflict of Interest

NICA CODE OF ETHICS¹

Conflict of Interest Statement²

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.

Conflict of Interest as Defined in part III of Chapter 112

“Conflict” or “conflict of interest” means a situation in which regard for a private interest tends to lead to disregard of a public duty or interest.³

Application of Code of Ethics Under part III of Chapter 112⁴

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.

What Does this Mean?

The ethics laws generally consist of two types of provisions:

A. Prohibited Actions of Conduct

- **Solicitation or Acceptance of Gifts [Section 112.313(2), Fla. Stat.]**
- **Unauthorized Compensation [Section 112.313(4), Fla. Stat.]**
- **Misuse of Public Position [Section 112.313(6), Fla. Stat.]**
- **Abuse of Public Position [Art. II, Section 8(h), Fla. Const.]**
- **Disclosure or Use of Certain Information [Section 112.313(8), Fla. Stat.]**

¹ See Section 4, Chapter 2021-134, Laws of Florida.

² Section 766.3145(1), Fla. Stat.

³ Section 112.312(8), Florida Stat.

⁴ Section 766.3145(2), Fla. Stat.

B. Prohibited Actions of Conduct

- **Doing Business with One’s Agency [Section 112.313(3), Fla. Stat.]**
- **Conflicting Employment or Contractual Relationship [Section 112.313(7), Fla. Stat.]**

C. Restrictions on Appointing, Employing or Contracting with Relatives

- **Anti-Nepotism Law [Section 112.313(3), Fla. Stat.]**

D. Post Office Holding and Employment (Revolving Door) Restrictions⁵

- **Lobbying by Former Legislators, Statewide Elected Officers, and Appointed State Officers [Section 112.313(9), Fla. Stat.]**
- **Lobbying by Former State Employees [Section 112.313(9), Fla. Stat.]**
- **Additional Restrictions on Former State Employees [Section 112.3185(3), Fla. Stat.]**

E. Voting Conflicts of Interest

- **Voting Conflicts re State Public Officers [Section 112.3143(2), Fla. Stat.]⁶**

⁵ Compare Section 766.3145(5), Fla. Stat. “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.”

⁶ Compare Section 766.3145(2), Fla. Stat. “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”.

- **Voting Conflicts re County, Municipal, or Other Local Officers [Section 112.3143(3), Fla. Stat.]**
- **Voting Conflict re Appointed State of Local Officer [Section 112.3143(4), Fla. Stat.]**

F. Gifts

- **Gift Solicitation Prohibition [Section 112.3148(3), Fla. Stat.]**
- **Gift Acceptance Prohibition [Section 112.3148(4), Fla. Stat.]⁷**
- **Gift Giving Prohibition [Section 112.3148(5)(a), Fla. Stat.]**

G. Disclosures

- **Form 1 – Limited Financial Disclosure⁸ [Section 112.3145, Fla. Stat.]⁹**
- **Form 1F – Final Form 1 Limited Financial Disclosure¹⁰**
- **Form 1X – Amendment to Form 1**

⁷ Compare Section 766.3145(3), Fla. Stat. “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.”

⁸ “Appointed members of each board, commission, authority, or council having statewide jurisdiction excluding members of solely advisory bodies; but including judicial nominating commission members; directors of Enterprise Florida, Scripps Florida Funding Corporation, and CareerSource Florida, and members of the Council on the Social Status of Black Men and Boys; the Executive Director, governors, and senior managers of Citizens Property Insurance Corporation; governors and senior managers of Florida Workers’ Compensation Joint Underwriting Association, board members of the Northeast Florida Regional Transportation Commission, and members of the board of Triumph Gulf Coast, Inc.; members of the board of Florida is for Veterans, Inc.; and members of the Technology Advisory Council within the Agency for State Technology.

⁹ “State and Local Officers and Specified State Employees are required to file disclosure by July 1 of each year. They also must file within thirty days from the date of appointment or the beginning of employment. Those appointees requiring Senate confirmation must file prior to confirmation.”

¹⁰ “Form 1F is the disclosure form required to be filed within 60 days after a public officer or employee required to file Form 1 leaves his or her public position. The form covers the disclosure period between January 1 and the last day of office or employment within that year.”

- **Form 2 – Quarterly Client Disclosure [Section 112.3145(4), Fla. Stat.]¹¹**
- **Form 6 – Full and Public Disclosure [Art. II, Section 8(a) and (i), Fla. Const. and Section 112.3144, Fla. Stat.]**
- **Form 6F – Full and Public Disclosure [Section 112.3144, Fla. Stat.]**
- **Form 6X – Amendment to Form 6**
- **Form 9 – Quarterly Gift Disclosure [Section 112.3148(8), Fla. Stat.]**
- **Form 10 – Annual Disclosure of Gifts from Governmental Agencies and Direct Support Organizations and Honorarium Event Related Expenses [Section 112.3148(6), Fla. Stat.]**
- **Form 30 – Donors Quarterly Gift Disclosure [Section 112.3148(5)(b), Fla. Stat.]**

G. Penalties

- **Non-Criminal Penalties [Section 112.3137, Fla. Stat.]¹²**

¹¹ “The state officers, local officers, and specified state employees listed above, as well as elected constitutional officers, must file a FORM 2 if they or a partner or associate of their professional firm represent a client for compensation before an agency at their level of government.

“A Form 2 disclosure includes the names of clients represented by the reporting person or by any partner or associate of his or her professional firm for a fee or commission before agencies at the reporting person’s level of government. Such representations do not include appearances in ministerial matters, appearances before judges of compensation claims, or representations on behalf of one’s agency in one’s official capacity. Nor does the term include the preparation and filing of forms and applications merely for the purpose of obtaining or transferring a license, so long as the issuance of the license does not require a variance, special consideration, or a certificate of public convenience and necessity.”

¹² “There are no criminal penalties for violation of the Sunshine Amendment and the Code of Ethics. Penalties for violation of these laws may include: impeachment, removal from office or employment, suspension, public censure, reprimand, demotion, reduction in salary level, forfeiture of no more than one-third salary per month for no more than twelve months, a civil penalty not to exceed \$10,000, and restitution of any pecuniary benefits received, and triple the value of a gift from a political committee”

- **Automatic Penalties for Failure to File Annual Disclosure [Section 112.3144 and 112.3145, Fla. Stat.]¹³**
- **Felony Conviction: Forfeiture of Retirement Benefits [Section 112.3173, Fla. Stat.]¹⁴**

H. Advisory Opinions

- **Request an Advisory Opinion [Section 112.322(3), Fla. Stat.]**

¹³ “Public officers and employees required to file either Form 1 or Form 6 annual financial disclosure are subject to automatic fines of \$25 for each day late the form is filed after September 1, up to a maximum penalty of \$1,500.”

¹⁴ Compare Section 766.3145(4), Fla. Stat. “An employee or board member who fails to comply with 231 subsection (2) or subsection (3) is subject to penalties provided under ss. 112.317 and 112.3173.”

Agenda Item # 3.D. (Tab E)

New Website



Care and Support of Florida's Families

NICA ensures birth-injured children and adults receive the care they need while reducing the financial burden on medical providers and families.

I am...



Filing a Claim



An Enrolled Family



A Medical Provider



Agenda Item # 3.E. (Tab F)

SB 1786 Review

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. (We are in the process of researching whether this requirement applies prospectively and that the term limit begins as of the effective date of the act, or whether a board member's current period of service should be included in calculating the 6 year limitation. Although certain provisions of the act are made specifically retroactive, this limitation on the board term takes effect on becoming a law. We will advise further as soon as we complete our research on this issue)
- 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, and 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.

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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 11.45, F.S.; requiring the Auditor General to audit
5 the Florida Birth-Related Neurological Injury
6 Compensation Association at least once every 3 years;
7 providing requirements for such audit; amending s.
8 766.303, F.S.; requiring that the association
9 administer the Florida Birth-Related Neurological
10 Injury Compensation Plan in a manner that promotes and
11 protects the health and best interests of children
12 with birth-related neurological injuries; amending s.
13 766.31, F.S.; revising requirements for the award for
14 compensation for claims under the plan; authorizing
15 parents or legal guardians receiving benefits under
16 the plan to file a petition with the Division of
17 Administrative Hearings to dispute the denial or
18 amount of reimbursement of actual expenses; increasing
19 the amount that may be awarded to the parents or legal
20 guardians of an infant found to have sustained a
21 birth-related neurological injury; requiring that such
22 amount be increased annually; requiring the plan to
23 provide retroactive payments to certain parents or
24 legal guardians which are sufficient to bring the
25 total award to a specified amount; authorizing such
26 payments to be made in a lump sum or periodically;
27 requiring the plan to make such payments by a
28 specified date; increasing the death benefit for an
29 infant found to have sustained a birth-related

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30 neurological injury; requiring the plan to provide
31 retroactive payments to certain parents or legal
32 guardians which are sufficient to bring the total
33 death benefit award to a specified amount; authorizing
34 such payments to be made in a lump sum or
35 periodically; requiring the plan to make such payments
36 by a specified date; creating s. 766.3145, F.S.;
37 requiring association employees to annually sign and
38 submit a conflict-of-interest statement as a condition
39 of employment; requiring prospective employees to sign
40 and submit such statement as a condition of
41 employment; providing that the executive director,
42 senior managers, and members of the board of directors
43 are subject to specified provisions; prohibiting board
44 members from voting on measures under certain
45 circumstances; providing procedures and requirements
46 for board members who have a conflict of interest;
47 prohibiting employees and board members from accepting
48 gifts or expenditures from certain individuals and
49 entities; providing penalties; prohibiting certain
50 senior managers and executive directors from
51 representing persons or entities before the
52 association for a specified timeframe; amending s.
53 766.315, F.S.; revising the membership of the board of
54 directors of the association; prohibiting certain
55 appointed directors from voting on board matters
56 relating to a claim if they were named in the petition
57 for the claim; providing a term limit for directors;
58 revising the process for recommending new directors;

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59 authorizing removal of a director from office for
60 specified reasons; revising the powers of the
61 directors; providing that meetings of the board of
62 directors are subject to the public meetings and
63 records law; specifying notice and agenda requirements
64 for board meetings; requiring the association to
65 furnish a list of compensable expenses to parents and
66 legal guardians receiving benefits; requiring the
67 association to publish a report on its website by a
68 specified date annually; providing requirements for
69 such report; requiring the association to submit a
70 report to the Governor, Legislature, and Chief
71 Financial Officer by a specified date annually;
72 providing requirements for such report; providing
73 applicability; requiring the Agency for Health Care
74 Administration to conduct a review and provide certain
75 recommendations regarding Medicaid third-party
76 benefits payable by and recoverable from the plan;
77 requiring the agency to submit a report of its
78 findings to the Legislature and the Chief Financial
79 Officer by a specified date; providing an effective
80 date.

81
82 Be It Enacted by the Legislature of the State of Florida:

83
84 Section 1. Paragraph (n) is added to subsection (2) of
85 section 11.45, Florida Statutes, to read:

86 11.45 Definitions; duties; authorities; reports; rules.—

87 (2) DUTIES.—The Auditor General shall:

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88 (n) At least once every 3 years, conduct an operational
89 audit of the Florida Birth-Related Neurological Injury
90 Compensation Association. Each operational audit shall include,
91 at a minimum, an assessment of compliance with ss. 766.303-
92 766.315, and compliance with the public records and public
93 meetings laws of this state. The first operational audit must be
94 completed by August 15, 2021.

95
96 The Auditor General shall perform his or her duties
97 independently but under the general policies established by the
98 Legislative Auditing Committee. This subsection does not limit
99 the Auditor General's discretionary authority to conduct other
100 audits or engagements of governmental entities as authorized in
101 subsection (3).

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

104 766.303 Florida Birth-Related Neurological Injury
105 Compensation Plan; exclusiveness of remedy.—

106 (4) The association shall administer the plan in a manner
107 that promotes and protects the health and best interests of
108 children with birth-related neurological injuries.

109 Section 3. Paragraphs (a) and (b) of subsection (1) of
110 section 766.31, Florida Statutes, are amended to read:

111 766.31 Administrative law judge awards for birth-related
112 neurological injuries; notice of award.—

113 (1) Upon determining that an infant has sustained a birth-
114 related neurological injury and that obstetrical services were
115 delivered by a participating physician at the birth, the
116 administrative law judge shall make an award providing

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117 compensation for the following items relative to such injury:

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

125 1. A total annual benefit of up to \$10,000 for immediate
126 family members who reside with the infant for psychotherapeutic
127 services obtained from providers licensed under chapter 490 or
128 chapter 491.

129 2. For the life of the child, providing parents or legal
130 guardians with a reliable method of transportation for the care
131 of the child or reimbursing the cost of upgrading an existing
132 vehicle to accommodate the child's needs when it becomes
133 medically necessary for wheelchair transportation. The mode of
134 transportation must take into account the special accommodations
135 required for the specific child. The plan may not limit such
136 transportation assistance based on the child's age or weight.
137 The plan must replace any vans purchased by the plan every 7
138 years or 150,000 miles, whichever comes first.

139 3. Housing assistance of up to \$100,000 for the life of the
140 child, including home construction and modification costs.

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

143 1. Expenses for items or services that the infant has
144 received, or is entitled to receive, under the laws of any state
145 or the Federal Government, except to the extent such exclusion

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146 may be prohibited by federal law.

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

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

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

161 (c) Expenses included under ~~this~~ paragraph (a) are ~~shall be~~
162 limited to reasonable charges prevailing in the same community
163 for similar treatment of injured persons when such treatment is
164 paid for by the injured person. The parents or legal guardians
165 receiving benefits under the plan may file a petition with the
166 Division of Administrative Hearings to dispute the amount of
167 actual expenses reimbursed or a denial of reimbursement.

168 (d) 1.a. (b) 1. Periodic payments of an award to the parents
169 or legal guardians of the infant found to have sustained a
170 birth-related neurological injury, which award may ~~shall~~ not
171 exceed \$100,000. However, at the discretion of the
172 administrative law judge, such award may be made in a lump sum.
173 Beginning on January 1, 2021, the award may not exceed \$250,000,
174 and each January 1 thereafter, the maximum award authorized

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175 under this paragraph shall increase by 3 percent.

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

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

185 b. Parents or legal guardians who received an award
186 pursuant to this section, and whose child died since the
187 inception of the program, must receive a retroactive payment in
188 an amount sufficient to bring the total award paid to the
189 parents or legal guardians pursuant to sub-subparagraph a. to
190 \$50,000. This additional payment may be made in a lump sum or in
191 periodic payments as designated by the parents or legal
192 guardians and must be paid by July 1, 2021 ~~\$10,000.~~

193 Section 4. Section 766.3145, Florida Statutes, is created
194 to read:

195 766.3145 Code of ethics.-

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

202 (2) The executive director, senior managers, and members of
203 the board of directors are subject to the code of ethics under

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204 part III of chapter 112. For purposes of applying part III of
205 chapter 112 to activities of the executive director, senior
206 managers, and members of the board of directors, those persons
207 are considered public officers or employees and the association
208 is considered their agency. A board member may not vote on any
209 measure that would inure to his or her special private gain or
210 loss and, notwithstanding s. 112.3143(2), may not vote on any
211 measure that he or she knows would inure to the special private
212 gain or loss of any principal by whom he or she is retained or
213 to the parent organization or subsidiary of a corporate
214 principal by which he or she is retained, other than an agency
215 as defined in s. 112.312; or that he or she knows would inure to
216 the special private gain or loss of a relative or business
217 associate of the public officer. Before the vote is taken, such
218 member shall publicly state to the board the nature of his or
219 her interest in the matter from which he or she is abstaining
220 from voting and, within 15 days after the vote occurs, disclose
221 the nature of his or her interest as a public record in a
222 memorandum filed with the person responsible for recording the
223 minutes of the meeting, who shall incorporate the memorandum in
224 the minutes.

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

231 (4) An employee or board member who fails to comply with
232 subsection (2) or subsection (3) is subject to penalties

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233 provided under ss. 112.317 and 112.3173.

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

240 Section 5. Section 766.315, Florida Statutes, is amended to
241 read:

242 766.315 Florida Birth-Related Neurological Injury
243 Compensation Association; board of directors; notice of
244 meetings; report.—

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

252 (b) The directors shall be appointed for staggered terms of
253 3 years or until their successors are appointed and have
254 qualified; however, a director may not serve for more than 6
255 consecutive years.

256 (c) The directors shall be appointed by the Chief Financial
257 Officer as follows:

258 1. One citizen representative who is not affiliated with
259 any of the groups identified in subparagraphs 2.-7.

260 2. One representative of participating physicians.

261 3. One representative of hospitals.

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262 4. One representative of casualty insurers.

263 5. One representative of physicians other than
264 participating physicians.

265 6. One parent or legal guardian representative of an
266 injured infant under the plan.

267 7. One representative of an advocacy organization for
268 children with disabilities.

269 (2) (a) The Chief Financial Officer may select the
270 representative of the participating physicians from a list of at
271 least three names recommended by the American Congress of
272 Obstetricians and Gynecologists, District XII; the
273 representative of hospitals from a list of at least three names
274 recommended by the Florida Hospital Association; the
275 representative of casualty insurers from a list of at least
276 three names, one of which is recommended by the American
277 Insurance Association, one of which is recommended by the
278 Florida Insurance Council, and one of which is recommended by
279 the Property Casualty Insurers Association of America; and the
280 representative of physicians, other than participating
281 physicians, from a list of three names recommended by the
282 Florida Medical Association and a list of three names
283 recommended by the Florida Osteopathic Medical Association.
284 However, the Chief Financial Officer is not required to make an
285 appointment from among the nominees of the respective
286 associations. A participating physician who is named in a
287 pending petition for a claim may not be appointed to the board.
288 An appointed director who is a participating physician may not
289 vote on any board matter relating to a claim accepted for an
290 award for compensation if the physician is named in the petition

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291 for the claim.

292 (b) If applicable, the Chief Financial Officer shall
293 promptly notify the appropriate ~~medical~~ association or person
294 identified in paragraph (a) to make recommendations upon the
295 occurrence of any vacancy, and like nominations may be made for
296 the filling of the vacancy.

297 (c) The Governor or the Chief Financial Officer may remove
298 a director from office for misconduct, malfeasance, misfeasance,
299 or neglect of duty in office. Any vacancy so created shall be
300 filled as provided in paragraph (a).

301 (3) The directors may ~~shall~~ not transact any business or
302 exercise any power of the plan except upon the affirmative vote
303 of four ~~three~~ directors. The directors shall serve without
304 salary, but are entitled to receive reimbursement ~~each director~~
305 ~~shall be reimbursed~~ for actual and necessary expenses incurred
306 in the performance of his or her official duties as a director
307 of the plan in accordance with s. 112.061. The directors are
308 ~~shall not be~~ subject to any liability with respect to the
309 administration of the plan.

310 (4) The board of directors has ~~shall have~~ the power to:

311 (a) Administer the plan.

312 (b) Administer the funds collected on behalf of the plan.

313 (c) Administer the payment of claims on behalf of the plan.

314 (d) Direct the investment and reinvestment of any surplus
315 funds over losses and expenses, if ~~provided that~~ any investment
316 income generated thereby remains credited to the plan.

317 (e) Reinsure the risks of the plan in whole or in part.

318 (f) Sue and be sued, and appear and defend, in all actions
319 and proceedings in its name to the same extent as a natural

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320 person.

321 (g) Have and exercise all powers necessary or convenient to
322 effect any or all of the purposes for which the plan is created.

323 (h) Enter into such contracts as are necessary or proper to
324 administer the plan.

325 (i) Employ or retain such persons as are necessary to
326 perform the administrative and financial transactions and
327 responsibilities of the plan and to perform other necessary and
328 proper functions not prohibited by law.

329 (j) Take such legal action as may be necessary to avoid
330 payment of improper claims.

331 (k) Indemnify any employee, agent, member of the board of
332 directors or alternate thereof, or person acting on behalf of
333 the plan in an official capacity, for expenses, including
334 attorney ~~attorney's~~ fees, judgments, fines, and amounts paid in
335 settlement actually and reasonably incurred in connection with
336 any action, suit, or proceeding, including any appeal thereof,
337 arising out of such person's capacity to act ~~acting~~ on behalf of
338 the plan, ~~if, provided that~~ such person acted in good faith and
339 in a manner he or she reasonably believed to be in, or not
340 opposed to, the best interests of the plan and the health and
341 best interest of the child having birth-related neurological
342 injuries, and ~~if provided that,~~ with respect to any criminal
343 action or proceeding, such ~~the~~ person had reasonable cause to
344 believe his or her conduct was lawful.

345 (5) (a) Money may be withdrawn on account of the plan only
346 upon a voucher as authorized by the association.

347 (b) All meetings of the board of directors are subject to
348 the requirements of s. 286.011, and all books, records, and

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349 audits of the plan are open to the public for reasonable
350 inspection ~~to the general public~~, except that a claim file in
351 the possession of the association or its representative is
352 confidential and exempt from the provisions of s. 119.07(1) and
353 s. 24(a), Art. I of the State Constitution until termination of
354 litigation or settlement of the claim, although medical records
355 and other portions of the claim file may remain confidential and
356 exempt as otherwise provided by law. Any book, record, document,
357 audit, or asset acquired by, prepared for, or paid for by the
358 association is subject to the authority of the board of
359 directors, which is responsible therefor.

360 (c) Except in the case of emergency meetings, the
361 association shall give notice of any board meeting by
362 publication on the association's website not fewer than 7 days
363 before the meeting. The association shall prepare an agenda in
364 time to ensure that a copy of the agenda may be received at
365 least 7 days before the meeting by any person who requests a
366 copy and who pays the reasonable cost of the copy. The agenda,
367 along with any meeting materials available in electronic form,
368 excluding confidential and exempt information, shall be
369 published on the association's website. The agenda shall contain
370 the items to be considered in order of presentation and a
371 telephone number for members of the public to participate
372 telephonically at the board meeting. After the agenda has been
373 made available, a change shall be made only for good cause, as
374 determined by the person designated to preside, and must be
375 stated in the record. Notification of such change shall be at
376 the earliest practicable time.

377 (d) Each person authorized to receive deposits, issue

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378 vouchers, or withdraw or otherwise disburse any funds shall post
379 a blanket fidelity bond in an amount reasonably sufficient to
380 protect plan assets, as determined by the plan of operation. The
381 cost of such bond will be paid from the assets of the plan.

382 (e)~~(d)~~ Annually, the association shall furnish audited
383 financial reports to any plan participant upon request, to the
384 Office of Insurance Regulation of the Financial Services
385 Commission, and to the Joint Legislative Auditing Committee. The
386 reports must be prepared in accordance with accepted accounting
387 procedures and must include such information as may be required
388 by the Office of Insurance Regulation or the Joint Legislative
389 Auditing Committee. At any time determined to be necessary, the
390 Office of Insurance Regulation or the Joint Legislative Auditing
391 Committee may conduct an audit of the plan.

392 (f)~~(e)~~ Funds held on behalf of the plan are funds of the
393 State of Florida. The association may only invest plan funds in
394 the investments and securities described in s. 215.47, and shall
395 be subject to the limitations on investments contained in that
396 section. All income derived from such investments will be
397 credited to the plan. The State Board of Administration may
398 invest and reinvest funds held on behalf of the plan in
399 accordance with the trust agreement approved by the association
400 and the State Board of Administration and within the provisions
401 of ss. 215.44-215.53.

402 (6) The association shall furnish annually to each parent
403 and legal guardian receiving benefits under the plan either by
404 mail or electronically a list of expenses compensable under the
405 plan.

406 (7) The association shall publish a report on its website

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407 by January 1, 2022, and every January 1 thereafter. The report
408 shall include:

409 (a) The names and terms of each board member and executive
410 staff member.

411 (b) The amount of compensation paid to each association
412 employee.

413 (c) A summary of reimbursement disputes and resolutions.

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

416 (e) Other expenses to oppose each plan claim. Any personal
417 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
420 thereafter, the association shall submit a report to the
421 Governor, the President of the Senate, the Speaker of the House
422 of Representatives, and the Chief Financial Officer. The report
423 must include:

424 (a) The number of petitions filed for compensation with the
425 division, the number of claimants awarded compensation, the
426 number of claimants denied compensation, and the reasons for the
427 denial of compensation.

428 (b) The number and dollar amount of paid and denied
429 compensation for expenses by category and the reasons for any
430 denied compensation for expenses by category.

431 (c) The average turnaround time for paying or denying
432 compensation for expenses.

433 (d) Legislative recommendations to improve the program.

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

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

438 (g) For the initial report due on or before November 1,
439 2021, an actuarial report conducted by an independent actuary
440 which provides an analysis of the estimated costs of
441 implementing the following changes to the plan:

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

444 2. Revising the eligibility for participation in the plan
445 by providing that an infant must be permanently and
446 substantially mentally or physically impaired, rather than
447 permanently and substantially mentally and physically impaired.

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

450 Section 6. The amendments made to s. 766.31, Florida
451 Statutes, by this act, apply to petitions pending or filed under
452 s. 766.305, Florida Statutes, on or after January 1, 2021.
453 However, s. 766.31(1)(d)1.b. and 2.b., Florida Statutes, as
454 created by this act, apply retroactively.

455 Section 7. The Agency for Health Care Administration must
456 review its Medicaid third-party liability functions and rights
457 under s. 409.910, Florida Statutes, relative to the Florida
458 Birth-Related Neurological Injury Compensation Plan established
459 under s. 766.303, Florida Statutes, and must include in its
460 review the extent and value of the liabilities owed by the plan
461 as a third-party benefit provider. Based on its findings, the
462 agency shall provide recommendations regarding the development
463 of policies and procedures to ensure robust implementation of
464 agency functions and rights relative to the primacy of the

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465 plan's third-party benefits payable under s. 766.31(1)(a)1. and
466 3., Florida Statutes, and recoveries due the agency under s.
467 409.910, Florida Statutes. On or before November 1, 2021, the
468 agency must submit to the President of the Senate, the Speaker
469 of the House of Representatives, and the Chief Financial Officer
470 a report of its findings regarding the extent and value of the
471 liabilities owed by the plan.

472 Section 8. This act shall take effect upon becoming a law.

Agenda Item # 4. (Tab G)

Staff Recommendations for Benefit Changes

Benefit Change Recommendations:

1. The Housing and Construction benefit language is new language that is usually applied prospectively. That would suggest that it applies to new construction and housing purchases that occur after the effective date of the new law. In reviewing this language, it appears the intent of the law is to benefit all current and future families. Many have completed major renovations or accessibility modification in the past. Some may have documents from those renovations, but they are often from years ago. When discussing this and asking for guidance from General Counsel we concluded that paying down or full payment of a home mortgage is consistent with the intent of this language and doesn't violate any legislative interpretation as to effective date and what is covered.

Recommendation:

Apply the Housing and Construction benefit language to include paying down or paying off an existing mortgage.

2. In 2014 the Board voted to reimburse parents for providing care to their child for 10 hours/day while in the hospital to avoid adding a financial drain to the anxiety of a sick child. Over the past few years, the level of nursing care even for children in the hospital has deteriorated and parents are afraid to leave their child in the hospital without them or the hospital in some cases requires parents to be there with a child. The 10 hours a day does not fully compensate with the new pressures and requirements placed on parents.

Recommendation:

Reimburse parents for 24 hours a day for in-hospital care at the Family Care rate.

3. The new language provides for "reliable transportation" or a van for the lifetime of the child. In implementing this provision, a policy needs to be set to assure that families are treated the same way and the benefit is easily understood.

Recommendation:

Set an allowable amount for "reliable transportation" of \$30,000 to meet the need to get to medical appointments.

Agenda Item # 5.A. (Tab H)

Audits – Auditor General

STATE OF FLORIDA AUDITOR GENERAL

Operational Audit

Report No. 2022-009
August 2021

**FLORIDA BIRTH-RELATED
NEUROLOGICAL INJURY
COMPENSATION ASSOCIATION**



Sherrill F. Norman, CPA
Auditor General

**Board of Directors and Executive Director of the
Florida Birth-Related Neurological Injury Compensation Association**

Section 766.303, Florida Statutes, establishes the Florida Birth-Related Neurological Injury Compensation Plan (Plan) to provide compensation, irrespective of fault, for neurological injury claims related to births occurring on or after January 1, 1989. During the period of our audit, Section 766.315(1)(a), Florida Statutes, provided for the Plan to be governed by a five-member Board of Directors appointed by the State's Chief Financial Officer and referred to as the Florida Birth-Related Neurological Injury Compensation Association (NICA). The NICA Board comprises one representative from each of the following groups: participating physicians, hospitals, casualty insurers, physicians other than participating physicians, and the general public.

During the period of our audit, Kenney Shipley served as the Executive Director of NICA and the following individuals served as Board members:

Representing:	Board Member:
General Public	Charles Lydecker, Chair
Participating Physicians	Steven Dukes, M.D.
Hospitals	Bryan Anderson
Casualty Insurers	Robert E. White, Jr.
Non-Participating Physicians	Samuel Wolf, D.O., from October 9, 2020 Marcos Lorenzo, M.D., through October 8, 2020

The team leader was Christi Alexander, CPA, and the audit was supervised by Joshua Barrett, CPA.

Please address inquiries regarding this report to Joshua Barrett, CPA, Audit Manager, by e-mail at joshuabarrett@aud.state.fl.us or by telephone at (850) 412-2804.

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FLORIDA BIRTH-RELATED NEUROLOGICAL INJURY COMPENSATION ASSOCIATION

SUMMARY

This operational audit of the Florida Birth-Related Neurological Compensation Association (NICA) focused on NICA's administration of the Florida Birth-Related Neurological Compensation Plan (Plan), including NICA's compliance with Sections 766.303 through 766.315, Florida Statutes, and applicable State public records and meetings laws. The audit also included an examination of selected NICA administrative activities. Our audit disclosed the following:

Plan Administration

Finding 1: NICA had not established a mechanism to effectively and consistently document, account for, and track benefit denials or disputes.

Finding 2: Analysis of Plan participant survey responses indicated that the NICA *Benefit Handbook* could be enhanced to better inform participants of their benefits and rights and that NICA could take steps to ensure that benefit request decisions are documented and adequately explained to participants.

Finding 3: NICA records did not always include the rationale for denying or limiting participant claim reimbursements.

NICA Assessments

Finding 4: NICA did not timely or consistently use all available remedies to collect delinquent assessment amounts from non-participating physicians. As of June 16, 2021, active non-participating physicians owed NICA \$14,367,193 for assessment amounts due for the 2016 through 2021 assessment years.

Selected Administrative Activities

Finding 5: NICA expenses associated with holiday luncheons for NICA personnel did not appear to be clearly necessary to the performance of NICA's statutory duties. Additionally, meals provided for NICA personnel and Board members were not limited to the amounts provided by State law.

Finding 6: NICA controls did not promote the retention of text and instant messages in accordance with State public records laws.

Information Technology Controls

Finding 7: Certain security controls related to user authentication for the network domain, NICA virtual private network (VPN), and Claims Accounting and Reserves Electronic System need improvement to ensure the confidentiality, integrity, and availability of NICA data and information technology resources.

BACKGROUND

State law¹ establishes the Florida Birth-Related Neurological Injury Compensation Plan (Plan) to provide compensation, irrespective of fault, for neurological injury claims related to births occurring on or after January 1, 1989. State law² defines a “birth-related neurological injury” as an injury to the brain or spinal cord of a live infant weighing at least 2,500 grams for a single gestation or, in the case of a multiple gestation, a live infant weighing at least 2,000 grams at birth, caused by oxygen deprivation or mechanical injury occurring in the course of labor, delivery, or resuscitation in the immediate postdelivery period in a hospital, which renders the infant permanently and substantially mentally and physically impaired. The definition applies to live births only and does not include disability or death caused by genetic or congenital abnormality.

The Plan was governed by a five-member Board of Directors (Board) appointed by the State’s Chief Financial Officer and referred to as the Florida Birth-Related Neurological Injury Compensation Association (NICA). The NICA Board comprises one representative from each of the following groups:³

- Participating physicians.
- Hospitals.
- Casualty insurers.
- Physicians other than participating physicians.
- The general public.

NICA is not considered a State agency, board, or commission.

FINDINGS AND RECOMMENDATIONS

PLAN ADMINISTRATION

State law⁴ specifies that an administrative law judge (ALJ) with the Division of Administrative Hearings (DOAH) has exclusive jurisdiction to determine whether a claim filed with NICA is compensable. State law further specifies that no civil action may be brought until a compensability decision has been made by an ALJ. Claims for compensation commence by the claimant filing a petition with DOAH and, if a petition is approved by an ALJ, the claimant becomes a participant in the Plan and entitled to compensation awards for medically necessary and reasonable expenses, including hospital, habilitative and training, drugs, special equipment, facilities, and related travel. However, compensation is not to be provided for expenses related to items or services that the infant has received or is entitled to receive, or expenses for which the infant has received reimbursement, or for which the infant is contractually entitled to receive reimbursement, from any prepaid health plan, health maintenance organization, or other

¹ Section 766.303(1), Florida Statutes.

² Section 766.302(2), Florida Statutes.

³ Section 766.315, Florida Statutes. Pursuant to Chapter 2021-134, Laws of Florida, effective June 21, 2021, the number of Board members was increased to seven by adding a parent or legal guardian of a Plan participant and a representative of an advocacy organization for children with disabilities. A listing of 2021 statutory changes impacting NICA are included as **EXHIBIT A** to this report.

⁴ Section 766.304, Florida Statutes.

private insuring entity. In addition, compensation is not to be provided for expenses for items or services that the infant has received, or is entitled to receive, or expenses for which the infant has received reimbursement, or for which the infant is 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.⁵

Compensation also includes periodic payments of an award to the infant's parents or legal guardians not to exceed \$100,000, a \$10,000 death benefit, and reasonable expenses incurred in connection with the filing of a claim, including attorney's fees.⁶ According to NICA records, during the period July 2019 through April 2021, 435 participants were reimbursed for claims totaling \$38,555,837.

Finding 1: Benefit Denial and Dispute Records

NICA's responsibilities include administering the Plan and the payment of claims on behalf of the Plan. Once a claimant becomes a participant in the Plan, a case manager is assigned to analyze benefit requests and to determine whether a request fits the medical profile and statutory requirements. Case managers are responsible for ensuring that Plan participants timely receive a *Benefit Handbook (Handbook)* that outlines participant rights, allowable expenses, benefit information, and procedures for filing reimbursement claims and benefit disputes.

Once a claim is determined to be compensable by an ALJ, NICA communicates with the parents or legal guardians of the participant to determine the medically necessary and reasonable needs of the participant and family. The *Handbook* includes a listing of benefits and procedures established to carry out NICA's statutory duties and specifies that NICA pays benefits under the Plan based on an evaluation of each participant and their needs. The *Handbook* further specifies that, if a parent or legal guardian feels that a benefit not described in the *Handbook* would be of advantage to the participant, the parent or legal guardian may request, by letter, that the benefit be reviewed by the Executive Director of NICA as an exception. The *Handbook* also provides that, when a Case Manager Supervisor cannot resolve a benefits dispute, the Executive Director is to attempt to resolve the dispute with the parent or legal guardian. The *NICA Claims Manual (Claims Manual)* for case managers provides that participants should be made aware of alternative methods of dispute resolution other than through legal channels so that the participants will come to their case manager before taking legal action on a claim.

NICA created the Claims Accounting and Reserves Electronic System (CARES), a Web-based system, to track participant activity, such as ALJ orders, participant contact information, and claims for reimbursement. As part of our audit, we interviewed NICA management and examined NICA records to determine whether NICA had established effective controls over claims processing, including approvals, denials, and benefit disputes. Our audit procedures found that, while NICA had established procedures for benefit denials and disputes, NICA had not established a mechanism within CARES to effectively and consistently document, account for, and track benefit denials or disputes from initial claims request to

⁵ Section 766.31(1)(a), Florida Statutes.

⁶ Section 766.31(1)(b) and (c), Florida Statutes. Pursuant to Chapter 2021-134, Laws of Florida, beginning January 1, 2021, periodic payments of an award may not exceed \$250,000 and parents and guardians who received an award prior to January 1, 2021, and whose child currently receives benefits are to receive a retroactive payment sufficient to bring the total award paid to \$250,000. Chapter 2021-134, Laws of Florida, also increased the death benefit to \$50,000. A listing of 2021 statutory changes impacting NICA are included as **EXHIBIT A** to this report.

resolution. Specifically, we noted that, as of May 18, 2021, CARES accounted for and tracked approved and paid claims through a combination of the paid check or Automated Clearing House number assigned to a participant's claim number. However, NICA had not established unique identifiers to account for and track denied or disputed claims.

According to NICA management, the case manager was to log requests into CARES, and include in the Activity Log, correspondence and supporting records related to potential denials or benefit disputes. NICA management further indicated that NICA does not provide participants formal denials of benefit requests. Instead, according to NICA, the CARES Activity Log may show that participants did not provide sufficient information or did not respond to requests for additional information that would facilitate the processing of a request or that NICA found acceptable alternatives for the participants.

Notwithstanding management's response, given the limitations of CARES, these outcomes were not always readily apparent. Additionally, with NICA's reliance on alternative dispute and benefit resolution methods, including those involving the Executive Director, it is important that NICA establish a mechanism to document, account for, and track the handling of all claims from initial request to resolution to evidence that claims are appropriately considered and adjudicated in accordance with State law and NICA procedures. According to NICA management, NICA was in the process of determining how to capture information that would allow NICA to effectively track the outcome of all claims for reimbursement, from initial request to resolution.

Recommendation: We recommend that NICA management enhance processes and controls to ensure that each participant claim for reimbursement is documented, accounted for, and tracked from initial request to resolution.

Finding 2: NICA Plan Participant Survey

To measure the degree of Plan participant satisfaction, in May 2021 we surveyed the 279 individuals listed as contacts for the 221 participants active in the Plan as of April 30, 2021. Survey questions, listed in **EXHIBIT B** to this report, addressed participant satisfaction with the *Handbook*, explanation of benefits, NICA's handling of questions, and the dispute resolution process.

We received survey responses from 120 respondents and the survey responses, as summarized in Table 1, indicated that most of the respondents received the *Handbook* and were satisfied with NICA's responses to participant questions. However, 41 percent of the respondents expressed dissatisfaction with the explanation of benefits and participant rights provided in the *Handbook* and 42 percent expressed dissatisfaction with the adequacy of NICA's explanation for the decision to approve or deny participant exception requests. Some respondents indicated that many covered items were not listed in the *Handbook* and that participants were not always made aware of what benefits to request. Additionally, respondents indicated that NICA did not always clearly explain, either verbally or in writing, why a benefit request was denied.

**Table 1
Plan Participant Survey Results**

	Dissatisfied		Satisfied		Total Number of Responses ^a
	Number of Responses	Percentage of Responses	Number of Responses	Percentage of Responses	
NICA <i>Handbook</i> was received.	12	11%	100	89%	112
NICA <i>Handbook</i> was adequate to understand rights and authorized benefits.	44	41%	63	59%	107
NICA timely and appropriately responded to Plan participant questions.	18	16%	92	84%	110
NICA's decisions on written exception requests were adequately explained.	18	42%	25	58%	43
Participant was satisfied with NICA's response to questions. ^b	26	26%	74	74%	100

^a Not all 120 survey respondents provided responses to every question.

^b Thirteen survey respondents indicated that they were neither satisfied nor dissatisfied with NICA's responses to questions.

Source: Survey responses from individuals listed by NICA as contacts for participants.

Recommendation: We recommend that NICA management evaluate the NICA *Handbook* to ensure that participants are adequately informed of their benefits and rights and take steps to ensure that NICA participant benefit request decisions are documented and adequately explained to participants.

Finding 3: Claims Reimbursement

For each reimbursement request, the case manager is to determine and document medical necessity, its relationship to the injury, and rule out other payment sources. In addition to the *Handbook*, the *Claims Manual* provided guidance to case managers when reviewing and approving or denying participant requests for reimbursement.

As part of our audit, we reviewed the *Handbook* and *Claims Manual* for consistency and alignment with statutorily allowable costs. Additionally, we examined NICA records, including the CARES Activity Logs, for 25 participant claim reimbursements, totaling \$150,251, paid during the period July 2019 through April 2021, to determine whether NICA appropriately documented approved and denied requests for reimbursement. We noted that:

- State law⁷ specifies that a telehealth provider⁸ has the duty to practice in a manner consistent with their scope of practice and the prevailing professional standard of practice for a health care professional who provides in-person health care services to a patient in the State. Effective March 20, 2020, the Agency for Healthcare Administration (AHCA) issued an alert expanding the use of telemedicine during the COVID-19 pandemic for Florida Medicaid. NICA received a copy of the AHCA alert on March 24, 2020. However, our examination of the CARES Activity Logs and participant records found that, on March 24, 2020, and March 26, 2020, NICA denied two participant requests for reimbursement of physical therapy telehealth services. In both

⁷ Section 456.47(2)(a), Florida Statutes.

⁸ Section 456.47(1)(b), Florida Statutes, defines a telehealth provider as any individual who provides health care and related services using telehealth and who is licensed or certified pursuant to State law.

instances, NICA records did not evidence how the expenses were not medically necessary and reasonable or that NICA had requested from the participants letters of medical necessity for the telehealth services. We also noted that a subsequent request for telehealth services from one of the two participants in November 2020 was approved.

In response to our audit inquiry, NICA management indicated that, at the time of the March 2020 requests, NICA had not established guidelines for the reimbursement of physical or occupational therapy telehealth services. Absent a letter of medical necessity from the service provider indicating that telehealth was to be used, it was difficult for NICA to determine how the physical evaluation and participant movements could be accomplished by telehealth. On November 18, 2020, NICA management informed case managers that NICA was going to cover physical and occupational therapy telehealth services. In response to our audit inquiry, NICA management indicated that they were not aware of any out-of-pocket expenses incurred by participants for these services.

- NICA records did not evidence the rationale for limiting a reimbursement request for a computer used as augmentative communication technology to \$1,000, instead of the total \$1,314 cost incurred by the participant. According to NICA management, NICA reimbursed the claim using guidelines included in draft revisions to the *Handbook* that detail reimbursement limitations for computers without any adaptive programs or attachments.

Absent records evidencing the basis for denying or limiting a participant reimbursement request and the *Handbook* reflecting current policy, NICA cannot adequately demonstrate that the Plan is being equitably administered in accordance with State law.

Recommendation: We recommend that NICA management ensure that the *Handbook* details all limitations on allowable reimbursement amounts and such limitations are appropriately communicated to participants. Additionally, we recommend that NICA management document the decision rationale each time a request for reimbursement is denied or limited.

NICA ASSESSMENTS

State law⁹ authorizes NICA to collect annual assessments from physicians, certified nurse midwives, and hospitals to finance the Plan. During the period July 2019 through April 2021, the assessment per physician licensed in the State under Chapter 458 or 459, Florida Statutes, was \$250. Physicians electing to participate in NICA were assessed \$5,000, certified nurse midwives working under the supervision of a certified physician were assessed \$2,500, and each hospital¹⁰ licensed under Chapter 395, Florida Statutes, was assessed \$50 per live infant delivered¹¹ at the hospital during the prior calendar year. According to NICA's audited financial statements, during the period July 2018 through June 2020, NICA collected assessments totaling \$54,755,762.

⁹ Section 766.314, Florida Statutes.

¹⁰ Section 766.314(4)(a), Florida Statutes, excludes hospitals owned or operated by the State or county, special taxing district, or other political subdivision of the State from assessment requirements.

¹¹ Section 766.314(4)(a), Florida Statutes, specifies that hospitals may exclude any infant born to a charity patient or born to a patient for whom the hospital receives Medicaid reimbursement, if the sum of the annual charges for charity patients plus annual Medicaid contractuals of the hospital exceeds 10 percent of the total annual gross operating revenues of the hospital.

Finding 4: Delinquent Assessments

State law¹² specifies that NICA may file suit to enforce the collection of required assessments and is entitled to attorney's fees, costs, and interest paid upon the entry of judgment against a physician for failure to pay. As part of the assessment process, NICA receives a listing of licensed physicians and hospitals from the Department of Health and AHCA, respectively. NICA sends billing statements to hospitals¹³ and non-participating physicians¹⁴ each October with the notification that, if payment is not received by January 1, NICA will charge interest at the statutorily authorized rate.¹⁵ NICA's assessment on non-participating physicians is considered a tax¹⁶ subject to the 5-year statute of limitation to take action to collect any tax.¹⁷

To evaluate whether NICA had established effective controls to ensure the timely collection of statutorily authorized assessments, we interviewed NICA management, analyzed NICA billing and payment records for hospitals and non-participating physicians, and examined NICA records for 40 non-participating physicians with assessment amounts due by January 1, 2020 and 2021, and 40 hospitals with assessment amounts due by January 1, 2021. Our audit procedures found that while NICA included interest charges on the billing statements of non-participating physicians with delinquent assessment amounts, NICA did not consistently take additional actions, such as sending demand collection letters or filing suit in county court, to ensure the collection of delinquent assessment amounts. According to NICA management, NICA had not sent demand collection letters since September 2017 and last filed suit in county court in January 2018 due to the substantial time and cost associated with the collection process and that NICA typically filed suit in batches covering multiple years to defray such costs. As shown in Table 2, our analysis of assessment data for active non-participating physicians disclosed that, as of June 16, 2021, the physicians' delinquent assessment amounts for the 2016 through 2021 assessment years totaled \$14,367,193, representing approximately 13 percent of the total assessment amount for those years.

¹² Section 766.314(6)(b), Florida Statutes.

¹³ Hospital billing statements are provided for the prior year based on hospital live birth records.

¹⁴ Non-participating physician billing statements are for the upcoming assessment year. For example, the October 2020 billing statement was for the 2021 assessment year.

¹⁵ Section 55.03, Florida Statutes, provides for the Chief Financial Officer to set the applicable rate of interest.

¹⁶ James F. Coy, M.D. v. Florida Birth-Related Neurological Injury Compensation Plan, 595 So.2d 943, Supreme Court of Florida.

¹⁷ Section 95.091(1)(a), Florida Statutes.

Table 2
Analysis of Active Non-Participating Physician Assessments Paid and Delinquent
For the 2016 Through 2021 Assessment Years
As of June 16, 2021

Assessment Year	Assessments Paid ^a		Delinquent Assessments		Total Assessment Amount	Delinquent Assessments as Percentage of Total Assessment Amount
	Amount	Number of Physicians	Amount	Number of Physicians		
2021	\$13,791,926	56,362	\$ 4,836,553	19,242	\$ 18,628,479	26%
2020	16,035,537	64,372	3,118,420	12,043	19,153,957	16%
2019	16,209,715	65,209	2,291,303	8,336	18,501,018	12%
2018	16,132,917	64,487	1,765,173	6,123	17,898,090	10%
2017	16,159,869	64,043	1,356,025	4,506	17,515,894	8%
2016	14,486,458	58,316	999,719	3,215	15,486,177	6%
Totals	<u>\$92,816,422</u>	<u>372,789</u>	<u>\$14,367,193</u>	<u>53,465</u>	<u>\$107,183,615</u>	<u>13%</u>

^a Includes late payments and pre-payment amounts applicable to the assessment year.

Source: NICA records.

To ensure that all statutorily authorized assessment amounts due to NICA to support the Plan are collected, it is critical that NICA consistently and timely use all available remedies to collect delinquent amounts.

Recommendation: We recommend that NICA management timely and consistently use all available remedies to collect delinquent assessment amounts.

Follow-Up to Management’s Response

NICA management indicated in their written response that they disagreed with the \$14.4 million total cited in the finding as the amount of outstanding non-participating physician assessments for the 2016 through 2021 assessment years. Instead, NICA management estimated the total for non-exempt, outstanding assessments to be closer to \$8.4 million. However, as indicated in management’s response, management based their figure on an estimate of physicians exempt from the statutory assessment. At the time of our audit, documentation identifying the physicians who were exempt from paying the assessment was not available. Consequently, the finding and recommendation stand as presented.

SELECTED ADMINISTRATIVE ACTIVITIES

As part of our audit, we evaluated selected NICA administrative activities and controls, including those related to general and administrative expenses and mobile devices.¹⁸

¹⁸ Mobile devices are portable devices, such as laptop computers, smartphones, and tablets, that allow storage and transmittal of entity data.

Finding 5: NICA Expenses

State law¹⁹ specifies that funds collected by NICA and any income therefrom are to be disbursed only for the payment of awards for compensation and for the reasonable expenses of administering the Plan. State law²⁰ authorizes travel paid by a public agency²¹ to be reimbursed at a rate of \$80 per travel day (\$20 per quarter of the travel day), or if actual expenses exceed \$80 per day, the actual expenses for lodging plus \$6, \$11, and \$19 for breakfast, lunch, and dinner, respectively. State law²² provides that Board members are to be reimbursed at the statutorily authorized reimbursement rates for actual and necessary expenses incurred in the performance of their official duties as a Board member of the Plan.

To determine whether NICA expenses served an authorized public purpose and were clearly necessary to the performance of NICA's statutory duties, we interviewed NICA management, reviewed the *NICA Personnel Policies and Procedures Manual (Procedures Manual)*, and examined NICA records for 97 general and administrative expense transactions totaling \$705,150 and incurred during the period July 2019 through April 2021. Our audit procedures found that:

- NICA hosted two holiday luncheons for NICA personnel in December 2019 and December 2020 with expenses totaling \$363 and \$421, respectively, that did not appear to be clearly necessary to the performance of NICA's statutory duties. Additionally, due to NICA's limited chart of accounts for general and administrative expenses, these expenses were recorded as travel. According to NICA management, these luncheons benefited the morale of NICA employees.
- While in travel status, NICA Board members and personnel were provided meals that exceeded the allowances authorized by State law. Specifically, we found that:
 - NICA expended \$1,145 on a breakfast buffet and \$746 on all day non-alcoholic beverage passes for four Board members, two NICA personnel, and six others (\$158 per person) who attended the August 26, 2019, Board meeting.
 - NICA expended \$732 on a lunch buffet and \$386 on all day non-alcoholic beverage passes for four Medical Advisory Committee²³ members and three NICA personnel (\$160 per person) who attended the September 28, 2019, NICA Medical Advisory Committee meeting. Additionally, due to NICA's limited chart of accounts, NICA recorded the meals as outreach.
 - NICA expended \$599 on a breakfast buffet and \$399 on all day non-alcoholic beverage passes for three Board members, two NICA personnel, and seven others (\$83 per person) who attended the December 13, 2019, Board meeting.
 - Contrary to State law, the *Procedures Manual* permitted NICA personnel to be reimbursed or to charge a NICA-issued credit card at the State reimbursement rate, or the reasonable actual work-related cost, for pre-approved travel. The *Procedures Manual* stated that, without a receipt, meals would be paid at a rate of \$6, \$11, and \$19 for breakfast, lunch, and dinner, respectively. Consequently, our examination noted that 13 NICA personnel meal expenses,

¹⁹ Section 766.314(3), Florida Statutes.

²⁰ Section 112.061(6), Florida Statutes.

²¹ Section 112.061(2)(a), Florida Statutes, defines an agency or public agency as any office, department, agency, division, subdivision, political subdivision, board, bureau, commission, authority, district, public body, body politic, county, city, town, village, municipality, or any other separate unit of government created pursuant to law.

²² Section 766.315(3), Florida Statutes.

²³ NICA created the Medical Advisory Committee to provide recommendations regarding medical evaluations and procedures utilized to evaluate claimants for inclusion in the Plan and to provide recommendations for treatment policies for participants with complex medical issues.

totaling \$1,046, exceeded statutorily authorized reimbursement rates. For example, two NICA personnel charged \$82 (\$41 per person) to a NICA-issued credit card for dinner the evening before the September 28, 2019, Medical Advisory Committee meeting.

According to NICA management, due to the number of attendees (e.g., Board and Medical Advisory Committee members, NICA personnel, investment consultants, actuaries, auditors), NICA contracted in advance with the hotel to have a buffet set up in the meeting room to allow the meetings to continue without breaking for meals. Further, NICA management indicated that NICA personnel, Board and Committee members, and other attendees were not reimbursed for meals when food was provided as part of the meeting. Notwithstanding, the average cost per person exceeded the meal allowances authorized by State law.

As stewards of funds intended to provide compensation for birth-related neurological injuries that result in significant medical and other costs, NICA management is responsible for ensuring that expenses are authorized by and in accordance with applicable law, reasonable in the circumstances and necessary to accomplish the authorized purpose of NICA and Board, and in pursuit of public, rather than a private, purpose.

Recommendation: We recommend that NICA management:

- **Ensure that the totality and nature of general and administrative expenses are clearly necessary to the performance of NICA's administration of the Plan and that the NICA chart of accounts promotes the appropriate recording of expenses.**
- **Limit expenses for Board and Medical Advisory Committee meetings to those clearly necessary to discharge Board and Committee duties and to the amounts authorized by State law.**
- **Update the *Procedures Manual* to require that reimbursable meal expenses and meals charged to a NICA-issued credit card not exceed statutorily authorized reimbursement rates.**

Finding 6: Retention of Text and Instant Messages

State law²⁴ requires agencies²⁵ to maintain public records in accordance with the records retention schedule²⁶ established by the Department of State, Division of Library and Information Services. The schedule specifies that the retention periods for electronic communications, including text and instant messages, are based on the content, nature, and purpose of the messages. Some of the purposes include administrative correspondence (3 fiscal years), program and policy development correspondence (5 fiscal years), and transitory messages (until obsolete, superseded, or administrative value is lost). According to NICA records, as of May 3, 2021, 19 NICA-owned mobile devices, including 2 Apple devices, were approved to conduct NICA business and had text and instant messaging capabilities.

To evaluate NICA's administration of mobile devices, we interviewed NICA management and inspected records for the 19 NICA-owned mobile devices. We noted that NICA had not disabled text messaging nor established a method to capture and retain text messages sent or received by the 19 NICA-owned

²⁴ Section 119.021(2)(b), Florida Statutes.

²⁵ Section 119.011(2), Florida Statutes, defines an agency as any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law.

²⁶ State of Florida *General Records Schedule GS1-SL for State and Local Government Agencies*.

mobile devices. Our examination of all NICA mobile device invoices for the period July 4, 2019, through May 3, 2021, found that 1,101 text messages were sent or received by 16 of the NICA-owned mobile devices. Additionally, we noted that NICA had not disabled instant messaging (iMessages) on the two NICA Apple devices nor established a method to capture and retain iMessages sent or received by these devices. According to NICA management, 17 of the mobile devices were provided to personnel to enable remote work during the COVID-19 pandemic and that NICA was researching methods to ensure that all text and instant messages are captured and retained in accordance with State law. Additionally, NICA management indicated that, as of June 11, 2021, iMessages had been disabled on the two Apple devices.

Absent a method to adequately retain text and instant messages, such messages may be sent or received and not be retained in accordance with State law, diminishing transparency and NICA's ability to provide access to public records.

Recommendation: We recommend that NICA management enhance mobile device controls to ensure that all text and instant messages sent or received by NICA-owned mobile devices are retained in accordance with State law.

INFORMATION TECHNOLOGY CONTROLS

As part of our audit, we evaluated selected NICA information technology (IT) controls, including controls related to user authentication.

Finding 7: Security Controls – User Authentication

Security controls are intended to protect the confidentiality, integrity, and availability of data and IT resources. Our audit procedures disclosed that certain security controls related to user authentication for the network domain, NICA VPN, and CARES need improvement. We are not disclosing the specific details of the issues in this report to avoid the possibility of compromising NICA data and related IT resources. However, we have notified appropriate NICA management of the specific issues.

Without appropriate security controls related to user authentication for the network domain, NICA VPN, and CARES, the risk is increased that the confidentiality, integrity, and availability of NICA data and related IT resources may be compromised.

Recommendation: We recommend that NICA management improve certain security controls related to user authentication for the network domain, NICA VPN, and CARES to ensure the confidentiality, integrity, and availability of NICA data and related IT resources.

RELATED INFORMATION

As part of our audit, we interviewed NICA management and NICA's general counsel regarding potential litigation. In response to our audit inquiries, NICA provided the pleadings and orders for *Arven v. the Florida Birth-Related Neurological Injury Compensation Association and Florida Birth-Related Neurological Injury Compensation Plan*, Case No. 19-cv-61053, in the Southern District of Florida; Case No. 20-13448, in the Eleventh Circuit Court of Appeals.

On September 9, 2019, the Plaintiffs/Relators filed an amended complaint alleging that NICA violated the Federal False Claims Act (“FCA”), 31 U.S.C. § 3729 *et seq.*, because NICA does not pay for expenses covered by Medicaid as the primary payor. The complaint asserted that the *Handbook* declares that NICA is the payor of last resort and that the Plan pays after available insurance or governmental programs have paid for medically necessary and reasonable expenses. In the Relators’ view, NICA is a “third party” under 42 U.S.C. § 1396a(a)(25)(A) and, as such, NICA should pay for expenses that would otherwise be covered by Medicaid because Medicaid is the “payor of last resort.” The Plaintiffs/Relators seek treble damages civil penalties and attorneys’ fees and costs for damages to the United States. On January 30, 2020, the United States notified the District Court that it would not intervene, but would continue its investigation.

On February 26, 2020, NICA filed a motion to dismiss the amended complaint arguing that: the Plan lacks capacity to be sued and, in any event, the amended complaint failed to state a claim against the Plan; as an arm of the State, NICA cannot be held liable under the FCA; the Relators’ claims fail under the Public Disclosure Bar; NICA is not a “third party” under 42 U.S.C. § 1396a(a)(25)(A); the amended complaint fails to allege a knowing violation; and the amended complaint does not identify any false claims or unpaid obligations.

On September 8, 2020, the United States District Court, Southern District of Florida, issued an order denying the motion to dismiss. In issuing the order, the District Court found that NICA is a third party and not an arm of the State and that sufficient circumstantial assertions were available to satisfy the knowledge element at this stage of the proceeding.

On December 20, 2020, NICA filed an opening brief with the United States Eleventh Circuit Court of Appeals requesting that the September 8, 2020, District Court order be reversed and the case be remanded to the District Court with instructions to dismiss with prejudice. As of June 1, 2021, the appeal is pending.

In response to our audit inquiry, NICA management indicated that the litigation of the issues bearing on a favorable or unfavorable outcome remains ongoing. As a result, the likelihood of a particular outcome cannot be reasonably made at this time, and a potential range of loss or recovery cannot be currently stated to a reasonable degree of certainty.

OBJECTIVES, SCOPE, AND METHODOLOGY

The Auditor General conducts operational audits of governmental entities to provide the Legislature, Florida’s citizens, public entity management, and other stakeholders unbiased, timely, and relevant information for use in promoting government accountability and stewardship and improving government operations.

We conducted this operational audit from May 2021 through June 2021 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

This operational audit of the Florida Birth-Related Neurological Injury Compensation Association (NICA) focused on NICA's administration of the Florida Birth Related Neurological Compensation Plan (Plan), including NICA's compliance with Sections 766.303 through 766.315, Florida Statutes, and applicable State public records and meetings laws. The audit also included an examination of selected administrative activities. For those areas, the objectives of the audit were to:

- Evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering responsibilities in accordance with applicable laws, administrative rules, contracts, grant agreements, and other guidelines.
- Examine internal controls designed and placed into operation to promote and encourage the achievement of management's control objectives in the categories of compliance, economic and efficient operations, the reliability of records and reports, and the safeguarding of assets, and identify weaknesses in those internal controls.
- Identify statutory and fiscal changes that may be recommended to the Legislature pursuant to Section 11.45(7)(h), Florida Statutes.

This audit was designed to identify, for those programs, activities, or functions included within the scope of the audit, deficiencies in internal controls significant to our audit objectives; instances of noncompliance with applicable governing laws, rules, or contracts; and instances of inefficient or ineffective operational policies, procedures, or practices. The focus of this audit was to identify problems so that they may be corrected in such a way as to improve government accountability and efficiency and the stewardship of management. Professional judgment has been used in determining significance and audit risk and in selecting the particular transactions, legal compliance matters, records, and controls considered.

As described in more detail below, for those programs, activities, and functions included within the scope of our audit, our audit work included, but was not limited to, communicating to management and those charged with governance the scope, objectives, timing, overall methodology, and reporting of our audit; obtaining an understanding of the program, activity, or function; identifying and evaluating internal controls significant to our audit objectives; exercising professional judgment in considering significance and audit risk in the design and execution of the research, interviews, tests, analyses, and other procedures included in the audit methodology; obtaining reasonable assurance of the overall sufficiency and appropriateness of the evidence gathered in support of our audit's findings and conclusions; and reporting on the results of the audit as required by governing laws and auditing standards.

Our audit included the selection and examination of transactions and records. Unless otherwise indicated in this report, these transactions and records were not selected with the intent of statistically projecting the results, although we have presented for perspective, where practicable, information concerning relevant population value or size and quantifications relative to the items selected for examination.

An audit by its nature, does not include a review of all records and actions of agency management, staff, and vendors, and as a consequence, cannot be relied upon to identify all instances of noncompliance, fraud, abuse, or inefficiency.

In conducting our audit, we:

- Reviewed applicable laws and NICA policies and procedures and interviewed NICA personnel to obtain an understanding of NICA Plan processes.

- Interviewed NICA management and compared the NICA *Benefit Handbook (Handbook)* and the *NICA Claims Manual (Claims Manual)* to applicable laws to determine whether the *Handbook* and *Claims Manual* were designed in a manner that effectively assisted participants when filing claims for reimbursement, informed participants of their rights, and assisted NICA case managers when reviewing participant claims for reimbursement.
- To measure NICA Plan participant satisfaction, sent surveys to the 279 individuals listed as contacts for the 221 participants active in the Plan as of April 30, 2021. We then combined and analyzed the survey responses from the 120 individuals who returned the survey.
- From the population of 98 claimant petitions filed with a Division of Administrative Hearings (DOAH) administrative law judge (ALJ) during the period July 2019 through April 2021, examined NICA records for 25 selected claimant petitions to determine whether NICA adhered to filing time frames established in State law.
- From the population of 29 NICA participant compensation awards executed during the period July 2019 through April 2021, examined NICA records for 10 selected awards to determine whether claims eligibility determinations were made in accordance with State law, participant claims were appropriate and timely paid, and whether the present value of the total costs of the participant claims were timely estimated.
- Interviewed NICA management and inspected NICA records for the present value of total claims costs for the quarters ended June 2020, September 2020, December 2020, and March 2021 to determine whether NICA updated the present value of total claims costs on a quarterly basis in accordance with State law.
- From the population of 19,628 participant reimbursement claims paid during the period July 2019 through April 2021 and totaling \$34,085,871, examined NICA records for 25 selected participant reimbursement claims totaling \$150,251 to determine whether NICA ensured that participants were awarded compensation and that, prior to authorization, reimbursement requests were appropriately supported and allowable under State law. Additionally, we:
 - Examined NICA records for the 25 selected participant reimbursement claims to determine whether any potential conflicts of interest between NICA personnel or the NICA Board and the participant or contracted service and equipment providers requesting reimbursement were properly disclosed.
 - Reviewed NICA correspondence logs for the 25 participants associated with the selected reimbursement claims to determine whether NICA provided accurate information to the participants and did not indicate that statutorily allowable goods or services submitted for reimbursement would be denied.
- To determine whether NICA established adequate controls to ensure the timely collection and remittance of assessment fees to the Plan, examined NICA records for:
 - 40 participating physicians and midwives, selected from the population of 1,536 physicians and midwives participating in NICA as of April 23, 2021, and with assessments totaling \$7,680,000.
 - 40 non-participating physicians, selected from the population of 80,876 medical doctors and 9,746 osteopathic physicians with active licenses as of May 13, 2021, and May 27, 2021, respectively.
 - 40 hospitals, selected from the population of 308 hospitals with active licenses as of May 13, 2021, including 19 hospitals with reported live births totaling 31,779 for the 2019 calendar year, selected from the population of 118 hospitals with reported live births totaling 214,909 for the 2019 calendar year.

- Analyzed NICA billing and payment data for the 86,963 non-participating physicians with assessment amounts due by January 1, 2020, and 118 hospitals with assessment amounts due by January 1, 2021, to determine whether NICA charged periodic interest fees to delinquent accounts.
- Interviewed NICA management, inspected NICA participant records, and reviewed DOAH case summaries for the 116 NICA cases with orders issued during the period July 2019 through April 2021 to determine whether participants had filed benefit disputes with DOAH and whether NICA had established processes to track denied claims for reimbursement.
- From the population of 1,713 general and administrative expenses, totaling \$6,165,766 and incurred during the period July 2019 through April 2021, examined NICA records for 97 selected expenses, totaling \$705,150, to determine whether NICA general and administrative expenses were adequately supported, clearly necessary to the performance of NICA's statutory duties, and served an apparent public purpose.
- Interviewed NICA management and examined NICA records related to NICA's text and instant message and iMessage retention capabilities to determine whether NICA had established adequate controls to retain text and instant messages and iMessages in accordance with State law.
- Obtained an understanding of NICA network domain, VPN, and Claims Accounting and Reserves Electronic System information technology (IT) controls, assessed the risks related to those controls, evaluated whether selected general IT controls were in place, and tested the effectiveness of the selected controls.
- Interviewed NICA management and reviewed NICA Board meeting records to determine whether Board meetings were publicly held, properly noticed, and promptly recorded in the public record during the period July 2019 through April 2021. Additionally, we examined NICA records to whether Board members did not have or properly disclosed any conflicts of interest with entities, Plan participants, or goods or service equipment providers discussed in Board meetings.
- To gain an understanding of ongoing NICA litigation, interviewed NICA management and NICA's general counsel, reviewed Sections 409.910 and 766.31, Florida Statutes, NICA records, and the legal orders and pleadings for case No. 19-cv-61053 in the Southern District of Florida, and case No. 20-13448 in the Eleventh Circuit Court of Appeals.
- Communicated on an interim basis with applicable officials to ensure the timely resolution of issues involving controls and noncompliance.
- Performed various other auditing procedures, including analytical procedures, as necessary, to accomplish the objectives of the audit.
- Prepared and submitted for management response the findings and recommendations that are included in this report and which describe the matters requiring corrective actions. Management's response is included in this report under the heading **MANAGEMENT'S RESPONSE**.

AUTHORITY

Chapter 2021-134, Laws of Florida, requires the Auditor General to conduct an operational audit of the Florida Birth-Related Neurological Injury Compensation Association and issue a written report by August 15, 2021. Pursuant to the provisions of Section 11.45, Florida Statutes, and Chapter 2021-134, Laws of Florida, I have directed that this report be prepared to present the results of our operational audit.

A handwritten signature in blue ink that reads "Sherrill F. Norman". The signature is written in a cursive style with a large initial 'S'.

Sherrill F. Norman, CPA
Auditor General

EXHIBIT A

2021 NICA-RELATED LEGISLATION

Effective June 21, 2021, Chapter 2021-134, Laws of Florida, made several changes to the NICA Plan. Specifically, the law:



Requires NICA to administer the Plan in a manner that promotes and protects the health and best interests of birth-injured children.



Increases the maximum amount that may be awarded to parents or legal guardians of an infant who has sustained a birth-related neurological injury from \$100,000 to \$250,000 for pending petitions or claims filed on or after January 1, 2021, with the amount increased by 3 percent annually. This provision also applies retroactively to claims filed before January 1, 2021.



Increases the death benefit for an infant who sustained a neurological injury from \$10,000 to \$50,000. This payment is retroactive.



Increases the number of directors on NICA's Board of Directors from five to seven by adding a parent or legal guardian of a Plan participant and a representative of an advocacy organization for children with disabilities.



Increases transparency requirements for the NICA Board of Directors.



Provides an annual benefit of \$10,000 for the immediate family members living with the child for mental health services.



For the life of the child, provides parents or legal guardians with a reliable method of transportation for the care of the child or reimburses the cost of upgrading an existing vehicle to accommodate the child's needs when it becomes medically necessary for wheelchair transportation.



Increases housing assistance from \$30,000 to \$100,000 for the lifetime of the child, including home construction and modification expenses.



Creates code of ethics for specified personnel and members of the Board of Directors.

EXHIBIT B

PARTICIPANT SURVEY QUESTIONS

NICA Benefit Handbook

1. Did you receive the NICA Benefit Handbook and related materials and information to help you understand your rights and what services and equipment were authorized under the Plan?
2. Did you feel that the NICA Benefit Handbook and related materials and information adequately explained your rights and what services and equipment were authorized under the Plan?
3. If you did not receive the NICA Handbook and related materials or information or felt they were inadequate, please briefly describe the deficiencies and provide suggestions for improvement.

NICA Participant Service

4. If you had questions regarding your benefits under the Plan, did you feel that NICA timely and appropriately responded to your questions?
5. If you answered 'Yes' or 'No' to question 4, please rate your level of satisfaction with NICA's response to your questions (a through e with e being very satisfied).
6. If you were less than satisfied, please provide details describing the reason(s) for your lack of satisfaction.

Claims Reimbursement

7. If you requested reimbursement for expenses from medical providers and pharmacies, did NICA approve your request?
8. If you answered 'No' or 'Sometimes' to question 7, please provide a brief description of the reason(s) NICA provided for denying your request.

Benefit Dispute

9. If you requested, by letter, that a benefit be reviewed by the Executive Director as an exception, was the Executive Director's decision adequately explained and satisfactory?
10. If you answered 'No' to question 9, please describe what was lacking from the explanation and the reason(s) for your lack of satisfaction.
11. If you answered 'No' or 'Sometimes' to questions 7 or 9, did you file a dispute with the Division of Administrative Hearings?

MANAGEMENT'S RESPONSE



August 12, 2021

Ms. Sherrill F. Norman, CPA
Auditor General
Claude Denson Pepper Building, Suite G74
111 West Madison Street
Tallahassee, FL 32399-1450

Dear Ms. Norman:

Thank you for sharing a copy of the Auditor General's Office Operational Audit Report for the Florida Birth-Related Neurological Injury Compensation Association (NICA) with me and allowing an opportunity to respond to the report. Please accept this as the formal response for NICA.

I appreciate the courtesy extended by the staff of the Auditor General's Office as well as the auditors who performed the testing during the course of the audit. The testing appeared to be accomplished quickly and diligently and we appreciate the efforts made to perform the audit with minimum intrusion or disruption of the normal functional processes within our offices.

There were seven unique findings presented to which NICA would like to respond:

Plan Administration

Finding 1: NICA had not established a mechanism to effectively and consistently document, account for, and track benefit denials or disputes.

Response: NICA is in the process of revising the CARES system to automatically track benefit denials and disputes and revising procedures to consistently and effectively monitor this process. While the current process warrants improvement to be more efficient and easier to monitor, NICA has not used attorneys for denials of benefits nor litigated a benefit issue since 2013. Improving the tracking and reporting of denials will help us better document those cases in which the benefit request is not initially approved for lack of documentation but is ultimately approved and paid. We are also looking at defining what a claim or request for benefits is, what an inquiry is, what a denial is and what a request for additional information should look like so that the system correctly identifies and monitors each of these situations. The work on the system now anticipates including procedures to communicate and track all of this automatically using function keys and codes to capture the correct information and templates generated by the system to assure consistent communication to the families

FLORIDA BIRTH-RELATED NEUROLOGICAL INJURY COMPENSATION ASSOCIATION
KENNEY SHIPLEY • EXECUTIVE DIRECTOR
P.O. BOX 14567 • TALLAHASSEE, FLORIDA 32317-4567 • (850) 488-8191
FACSIMILE (850) 922-5369 • WWW.NICA.COM

of the appropriate actions taken by NICA and whether and what the dispute resolution method is available for that action.

Finding 2: Analysis of Plan participant survey responses indicated that the NICA *Benefit Handbook* could be enhanced to better inform participants of their benefits and rights and that NICA could take steps to ensure that benefit request decisions are documented and adequately explained to participants.

Response: Although the percentage of “satisfied” responses consistently exceeded the “dissatisfied” responses by a significant amount, NICA agrees that the NICA Benefit Handbook should be enhanced to better inform participants of their benefits and rights. Modifications to the Benefit Handbook to address the issues raised and others are in process and should be available in DRAFT on the NICA website by the time the final report is published. In addition, on the NICA website NICA is asking for input on this DRAFT Benefit Handbook so that we can understand additional enhancements that families would like to see. NICA has also set up a “Blast” email account to communicate with and update families with new information. NICA is currently using that to notify families of new benefits and procedures and to share answers to questions that have been raised by one or more families with all families to keep them better informed.

Finding 3: NICA records did not always include the rationale for denying or limiting participant claim reimbursements.

Response: NICA is in the process of establishing reason codes to utilize with denials or partial denials (limits on reimbursement) and procedures to utilize system generated template communications that will be issued and explain the limitation or denial in an understandable format. Once developed they will be included in the Benefit Handbook to help Families understand what to do when they receive one.

NICA Assessments

Finding 4: NICA did not timely or consistently use all available remedies to collect delinquent assessment amounts from non-participating physicians. As of June 16, 2021, active non-participating physicians owed NICA \$14,367,193 for assessment amounts due for the 2016 through 2021 assessment years.

Response: In finding 4, the audit report states that the total outstanding non-participating physician assessments is \$14.4 million dollars for assessment years 2016-2021. NICA disagrees with this stated total. Based on the same data utilized by the auditors in preparing the audit report, NICA estimates the total for non-exempt, outstanding assessments to be closer to \$8.4 million rather than \$14.4 million. NICA believes the discrepancy between the two figures is due to the fact that the \$14.4 million total includes those physicians who are not required to pay the assessment as set forth in section 766.314(1)(b)4., Florida Statutes. Section 766.314(1)(b)4., Florida Statutes,

provides that the NICA assessment is “not applicable” to the physicians falling within the categories listed in that section, but, until NICA receives documentation demonstrating that a physician is exempt from paying the assessment, NICA sends an invoice for the annual assessment amount. NICA then flags those non-participating physicians who appear to be eligible for an exemption based on the license status on the Department of Health website. Additionally, past due payments are received on a rolling basis. Based on experience, NICA believes that the majority of the outstanding \$8.4 million will be received within the next 12 months.

In finding 4, the audit report also recommends that: “NICA management timely and consistently use all available remedies to collect delinquent assessment amounts.” As recognized in the audit report, however, the only mechanism available to NICA to enforce collection of the non-participating physician assessments is the filing of a lawsuit in county court as set forth in section 766.314, Florida Statutes. NICA routinely avails itself of this remedy but determined that it was more beneficial and cost effective to file suits in batches covering multiple assessment years to avoid incurring costs that NICA would likely not recover if suit is filed too soon and does not allow sufficient time for the physicians to document entitlement to the exemption set forth in section 766.314(1)(b)4., Florida Statutes. If NICA files suit against a physician who later provides documentation that the physician is exempt from paying the assessment, NICA must dismiss the suit and cannot recover any of the associated fees, court costs or attorney’s fees incurred in pursuing that suit. As mentioned above, based on NICA’s experience, the exempt physicians may take two or three years before they provide the requisite documentation. Filing in batches every few years, not only defrays costs but is more likely to result in collection of past due amounts since the exempt physicians have had ample time to provide documentation. There is no mechanism for NICA to require that physician timely provide documentation demonstrating that they are exempt. NICA includes this in the invoices, but there is no means afforded to NICA in statute to enforce this requirement.

The process of filing suit to enforce payment of the NICA assessments requires substantial time and cost to complete. While NICA is entitled to attorney’s fees and costs once a judgment is entered and the physician satisfies that judgment, NICA must pay upfront the costs associated with proper service of demand letters, filing fees, costs associated with serving the summons and attorneys’ fees. The audit report recommends that NICA timely avail itself of the remedy available to it but does not indicate what the auditors view as “timely.” NICA submits, it is simply not practicable or reasonable to file suit seeking payment of past due assessments that are not at least three to four years past due. To do so would require a significant dedication of staff resources and result in NICA unnecessarily incurring costs that it will not recover in many instances. During this timeframe, many of the physicians who are entitled to the exemption will provide the necessary documentation, thus obviating the need to file suit against them in year 4 and avoid incurring unnecessary costs to NICA.

On a going forward basis, NICA will ensure that it files suit seeking past due payments in a more consistent manner to timely collect the past due amount. For instance, currently, NICA is in the process of sending demand letters for delinquent physician assessments that are 5 years overdue. NICA will then proceed with filing suit in county court against those physicians that do not respond to the demand letters. NICA will work toward filing suit every two years to collect the past due assessments that are over 4 years past due.

Selected Administrative Activities

Finding 5: NICA expenses associated with holiday luncheons for NICA personnel did not appear to be clearly necessary to the performance of NICA's statutory duties. Additionally, meals provided for NICA personnel and Board members were not limited to the amounts provided by State law.

Response: – Finding 5 relates to certain limited expenses questioned by the auditors. Each category of expenses will be addressed separately below:

- **General Administrative Expenses:** The audit report takes issue with NICA hosting two holiday luncheons for its NICA personnel in December 2019 and December 2020 with expenses totaling \$363 and \$421, respectively. As noted in the audit report, it is NICA's view that these luncheons benefit the morale of NICA's employees and were necessary to the performance of NICA's administration of the Plan. On a daily basis, NICA's nurse case managers work with families who care for their catastrophically injured children. While the nurse case managers find their work very important and rewarding, it can be emotionally taxing at times. NICA management viewed the provision of a small holiday lunch for its personnel as important for lifting morale. With that said, on a going forward basis, NICA will not utilize its administrative funds to provide for events of this nature. Additionally, with respect to the audit finding that NICA's chart of accounts did not readily allow coding for these types of expenses, NICA will review its chart of accounts and add additional fields, where necessary, to promote the appropriate recording of all administrative expenses.
- **Meals provided at the NICA Board and Medical Advisory Committee meetings:** The audit report addresses 2 NICA Board meetings and one Medical Advisory Committee meeting where NICA provided food in a buffet style manner for the Board members and attendees. Several people attend the Board and committee meetings including Board and Committee members, NICA staff, and various other parties such as investment consultants, actuaries and auditors who may be asked to present materials at these meetings. NICA contracted in advance with the hotel to have a buffet set up in the meeting room to allow the meetings to continue without breaking for meals. NICA staff, Board members, Committee members and other presenters were not reimbursed for meals when food was provided as part of the meeting. NICA viewed the provision of these meals as important to the performance of NICA's administration of the Plan.

When the meetings continue without breaking, the overall associated travel costs are potentially lessened because the members and staff can leave earlier in the day to travel home thereby reducing the costs of hotel and additional meals. On a going forward basis, however, NICA will comply with section 112.061, Florida Statutes regarding meals of this nature during NICA Board meetings or Medical Advisory Committee meetings.

- **Staff Travel Expenses:** The audit report questions certain limited travel reimbursements to NICA staff totaling \$1,046 as exceeding that authorized by section 112.061, Florida Statutes. The audit report cites section 112.061, Florida Statutes, as applicable to NICA. NICA, however, does not fit squarely within the definition of a “agency” or “public agency” as set forth in section 112.061(2)(a), Florida Statutes. Section 766.315(3), Florida Statutes, subjects to travel reimbursement pursuant to 112.061, but there is no specific application of that statute to NICA staff. As such, NICA adopted the following policy for travel expense reimbursement:

Without a receipt, meals will be paid at the rate of \$6 for breakfast, \$11 for lunch and \$19 for dinner, or the highest current amount allowable by the State of Florida regulations. With receipts, actual reasonable hotel and meal expenses may be reimbursed or the State of Florida approved per diem may be paid. To be eligible for breakfast travel must begin before 7:00 a.m., lunch travel must begin before 12:00 noon and dinner travel must end after 8:00 p.m.

As demonstrated by the above-quoted NICA policy, NICA is generally in compliance with the travel reimbursement requirements set forth in section 112.061. The only issue the auditors noted was that portion of NICA’s policy which permits NICA personnel to be reimbursed for or charge to a NICA issued credit card, the actual meal expense rather than limiting the costs to the statutory state rate noted above. Although NICA believes it was correct in allowing the questioned reimbursement pursuant to its policies, on a going forward basis NICA will follow the requirements of section 112.061, Florida Statutes. As recommended, NICA is in the process of updating its Procedures Manual to require that reimbursable meal expenses and meals charged to a NICA-issued credit card not exceed statutorily authorized reimbursement rates.

Finding 6: NICA controls did not promote the retention of text and instant messages in accordance with State public records laws.

Response: Use of NICA owned cellular phones for staff members, other than the Executive Director and Deputy Director, was implemented as part of the response to allow employees to work remotely during the COVID 19 pandemic.

NICA is researching methods to ensure that all text and instant messages are captured and retained in accordance with State law.

NICA is working with the provider to disable text messaging features from these devices and to find alternative means to allow remote personnel to have voice communication without text messaging.

Information Technology Controls

Finding 7: Certain security controls related to user authentication for the network domain, NICA virtual private network (VPN), and Claims Accounting and Reserves Electronic System need improvement to ensure the confidentiality, integrity, and availability of NICA data and information technology resources.

Response: NICA takes the security and protection of the NICA entrusted data with the utmost care. NICA currently implements multilayered security controls to ensure the confidentiality, integrity and availability of NICA data and information technology resources. Additionally, both the network and CARES applications have separate security controls which include access, roles/permissions, and unique user credentials. HIPPA requires NICA to comply with physical, technical, and administrative safeguards to guarantee privacy, confidentiality, data integrity, and security for all information in motion and at rest. The physical controls span from facility access, device timeouts, and bitlocker, as well as, back-ups for each device and environment. Technical standards have been addressed in the previous comment. Administratively, each user signs non-competes, NARFS, and Confidentiality agreements. Training and policy manuals are provided all users. To further enhance security, many controls are managed at the policy level thereby reducing NICA exposure to risk. Finally, each device and the environment at large is further protected by virus and intrusion detection firewalls. NICA continuously monitors its environment and spends countless hours ensuring all software is current including releases (once evaluated for compatibility and risk) and patch management. NICA management will implement recommendations from the AG to further increase security controls related to user authentication for the network domain, NICA virtual private network and internal applications.

I believe NICA's actual and proposed corrective actions for each finding will satisfy the issues raised in the identified findings. If you have any questions or further recommendations, please let me know.

Sincerely,



Kenney Shipley
Executive Director

Agenda Item # 5.B. (Tab I)

**Audits – Consumer Advocate
Family Survey**

Summary of NICA Participant Survey Responses

In April 2021, Florida Chief Financial Officer Jimmy Patronis issued a directive empowering me, as Florida's Insurance Consumer Advocate, to engage in advocacy efforts on behalf of families who receive services from the [Florida Birth-Related Neurological Injury Compensation Association \(NICA\)](#). This action directs me to coordinate directly with families participating in the NICA program and advocate on their behalf.



To obtain feedback directly from families on their experience with NICA and to inform my advocacy efforts, I surveyed current NICA participants. Fifty family members responded to the survey and provided insightful, enlightening responses.

Below is a summary and identified trends from the survey responses.

ENTRY INTO NICA

56%

of respondents became **aware of NICA through an attorney**.

47%

of respondents filed a petition to receive compensation through NICA **one year after the birth** of their child.

74%

of respondents were **represented by an attorney** during the petition process.

*"We are the ones who watch our children and no one at NICA seems to have any *real experience with severely handicapped children. When we express needs to them, we are treated as fraudsters. The main thing I want is for them to understand how is that if 1/4 of us are saying our children need X, then we are the experts and we know. They, with zero experience with kids like ours, are not knowledgeable. And we're not liars for pointing that out."*

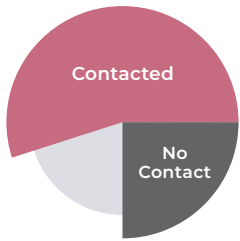


46% of respondents have been a NICA participant for **more than 10 years**.

24% of respondents have been a NICA participant for **more than 20 years**.

90% of respondents live in Florida.

NICA ORIENTATION



57% of respondents **were contacted** by NICA within 4 weeks after their claim was determined compensable.

26% of respondents **were not contacted** by NICA after their claim was determined compensable.

71%

of respondents indicated their primary form of communication with NICA during the orientation process was by **phone and via email.**

For those respondents who shared an overall assessment of NICA's orientation:

65% of respondents assessed NICA's orientation as **very good** and **satisfactory.**

35% of respondents assessed NICA's orientation as **unsatisfactory** and **needs improvement.**

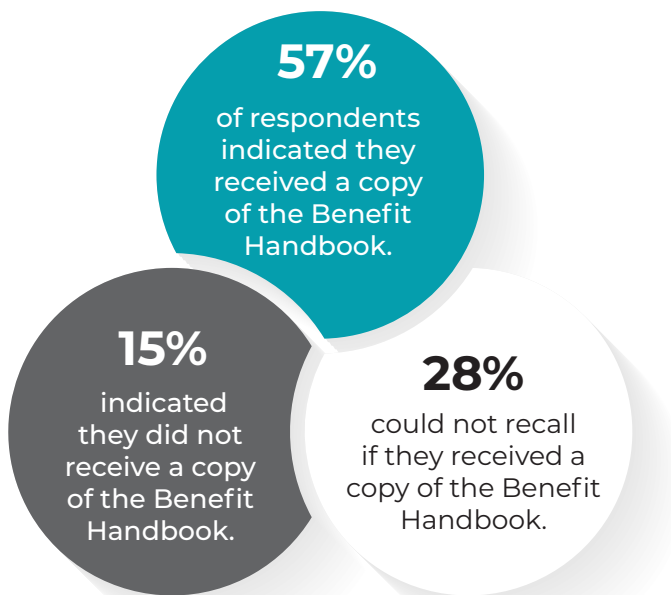
OF THOSE RESPONDENTS WHO WERE **NOT SATISFIED** WITH NICA'S ORIENTATION:

58%

indicated a **review of the Benefit Handbook** was not provided or not explained thoroughly.

42%

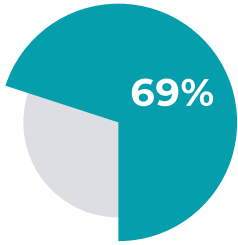
indicated the majority of the information was **verbal** and **minimal written information** was provided.



"It's (Benefit Handbook) helpful in a very vague and minimalistic way. At first glance it seems like there is a lot of benefits. But as you move through life with these children you quickly realize how many things are not addressed in the book and how often we have to ask about something being covered. If there are things like summer camp money, intensive therapies, better explanation of parental pay and parent as nurse pay, etc. These things are not explicit to specific kids but are benefits for ALL children."

"When we referred NICA to the client handbook, we would be advised; "it was just a guide. Every client is different." The client handbook only refers to the benefits for young children, but does not address teens, young adults or adults. This has been a grievance discussed along the way, but was never changed by NICA."

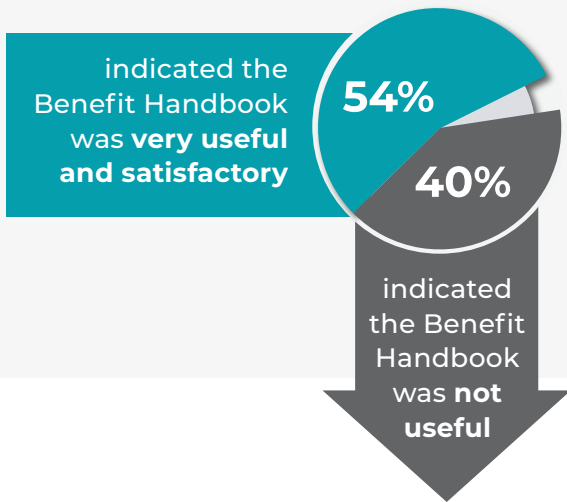
BENEFIT HANDBOOK



Throughout their NICA experience, when the Benefit Handbook was revised, **69%** of respondents indicated **NICA did not inform them** each time the **Benefit Handbook was revised**.

“It’s (Benefit Handbook) written for a lawyer. Not parents already living day to day in a state of duress.”

FOR THOSE RESPONDENTS WHO DESCRIBED THE USEFULNESS OF THE BENEFIT HANDBOOK:



55% of respondents indicated the Benefit Handbook **initially matched their expectations until they became aware of the many benefits that are not included** in the Benefit Handbook.

20% of respondents indicated the Benefit Handbook **provided less information than what they expected**.

OF THOSE RESPONDENTS WHO INDICATED THE BENEFIT HANDBOOK WAS **NOT USEFUL**:

79%

indicated it does not include all the benefits, it is **vague** and **not easy to comprehend** or interpret.

58%

indicated NICA does **not consistently make claim/benefit decisions** in accordance with the Benefit Handbook.

*“NICA does not take into account needs parents consistently explain to them. They’ll often say something in the handbook is not covered—but often it should be **ADDED** because many of our kids need it. Other parts of the handbook are **incomplete or deliberately vague.**”*

“In some instances it was useful, but not very thorough. Certain things that are covered are not in the handbook. I asked about them and was told they were not covered, but I have since found out that they were covered.”

“The handbook does provide some helpful information, but it is quite vague. In addition, there are many benefits available to families that are not listed in the handbook.”

“All covered things should be listed- anything that NICA has ever paid for should be listed. If for some reason it is questionable as to whether a certain child is eligible for a benefit it can be taken up at that time but it is not fair if we don’t even know these benefits are an option.”

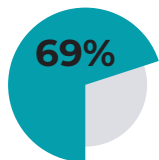
NICA CLAIM PROCESS

For those respondents who shared their experience of NICA's claim review process for:

REPEAT OR ROUTINE REQUESTS		NEW ITEMS OF SERVICES
80%	indicated they generally receive a claim decision within two weeks .	72%
38%	indicated NICA's claim review process and claim decisions appear to be inconsistent at times .	44%
34%	indicated NICA's claim review process was time consuming and arduous .	40%
44%	indicated NICA's claim review process was consistent, efficient and timely .	23%

"They often react to any request as if we are trying to commit fraud. It's very disheartening to need something for your child, ask for that thing, and then be treated as if you're a liar or worse for asking. They act like they need to protect themselves from us."

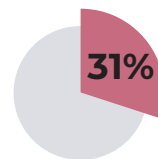
For those respondents who shared their experience of NICA's reimbursement process after their claim has been approved:



69%

indicated NICA's reimbursement process is **clearly outlined** and **easy to understand**.

"Once the hard work is done they reimburse me quickly but getting to that point is the overwhelming part."



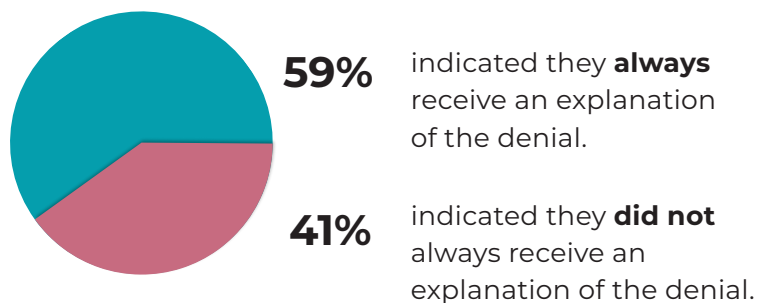
31%

indicated reimbursements are **consistently delayed** and **require additional follow-up**.

"The problem is in the lack of consistency with what is covered and the amount left up to opinion of the executive director. I often don't have time to question it, so over the years I just didn't ask for reimbursement."

“To us, their top priority shifts on time. Before you are a NICA client, their priority is to protect the physician/institutions from litigation. Once you are a NICA client, their top priority shifts to running it like an insurance company. They provide back-up medical compensation at their discretion like an insurance company would. We have always maintained private insurance through work and they provide secondary coverage. Once a service is approved, they do provide compensation as agreed.”

For those respondents who have experienced a claim denial:



“Denials are explained and there are explanations on ways to help within guidelines or what additional information is needed.”

“Deny deny deny. We had to fight for unique but qualified items time and time again. Exhausting. If and When finally approved, the language would be condescending, as if lucky to receive.”

For those respondents who received an explanation of the claim denial:

46%

indicated at times, the **explanations are not logical** based upon the circumstances of the request

37%

indicated at times, the **explanations are inconsistent.**

35%

indicated at times, the **explanations are vague.**

26% indicated the explanations are clear, reasonable and easy to understand.

“Often we get denials like “NICA doesn’t cover that.” But why not? For example, dental is not covered even though dental issues are common and the NICA statute does not exclude dental. So NICA just decided the answer is no.

Other times, explanations are offered that make no sense. “NICA doesn’t cover parental care when the children are hospitalized because it’s the hospital’s liability if the child dies.” But, we are still providing care—more care than usual—and cannot leave our children’s side for a moment. Why can’t we be compensated as normal? According to NICA we don’t get paid for that care because the hospital is “liable” during that time? The implication is that we should go uncompensated or allow the hospital to harm our children if care is inadequate.”

“When the lack of clarity and consistency concerning explanations is pointed out, instead of responding with helpful information, leadership resorts to manipulative tactics in an attempt to redirect and/or end the conversation.”

NICA'S COMMUNICATION

RESPONDENTS DESCRIBE THE TIMELINESS OF NICA'S COMMUNICATION:

72% as **very timely** and **consistent**.

24% as **inconsistent** and **delayed at times**.

"I get responses to my emails and calls within a fair amount of time. Not always contacted to explain new information regularly. Never have been informed of changes to benefits book by phone, letter or email. I have only learned of changes through other families or randomly when I asked about something."

"Generally the tone of communication with my nurse manager is quite helpful and supportive. In contrast, the tone of communication with leadership (who often feign compassion) is in actuality manipulative and predatory."

For those respondents who described the overall quality and tone of NICA's communication:

48% described it as **compassionate, empathetic and supportive**.

33% indicated it **varies based upon the situation** or their needs.

33% indicated it **varies depending upon the level of communication** with their assigned nurse/case manager.

31% described it as **business-focused**.

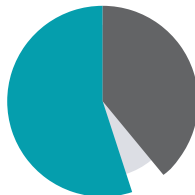
27% described it as **similar to an insurance company**.

25% indicated that it **lacks empathy**.

"Where NICA fails to communicate effectively is in providing all helpful and appropriate coverage options. This secrecy has fostered an environment that allows great inconsistencies in coverage for families."

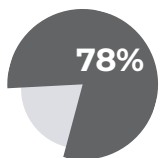
For those respondents who rated NICA's overall level of communication:

54% rated it as **very good, frequent** and **informative**.

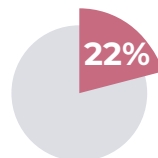


38% rated it as **inconsistent** and **needs improvement**.

SB 1786



of respondents indicated SB 1786 is **a good first step, but additional changes are needed**.



of respondents indicated that SB 1786 **matched their expectations**.

NICA BOARD OF DIRECTORS MEETINGS

85%

of respondents indicated they **do not tune in or participate** in the NICA Board of Directors Meetings.

FOR THOSE RESPONDENTS WHO INDICATED THEY DO NOT TUNE IN OR PARTICIPATE IN THE NICA BOARD OF DIRECTORS MEETINGS:

56%

indicated they were **not aware they have access** to the meetings.

28%

indicated they were **not made aware** of the meetings.

“Even since the law passed, we can’t get info about when the next board meeting is and where. They often give information to one parent but not another. Many case managers feel like they can’t answer any questions without involving Vicky and Kenney. It’s always a bad game of telephone.”

GENERAL FEEDBACK

For those respondents who shared their feedback on the areas NICA should improve upon:

77% indicated NICA should improve available benefits.

“Reimbursement for newer technologies, medical devices, therapies.”

54%

indicated NICA should **improve the reimbursement/claim process.**

44%

indicated NICA should **improve its communication.**

40%

indicated NICA should **improve its participant printed and digital resources.**

33%

indicated NICA should **improve its technology.**

For those respondents who described what they believe is NICA’s top priority based upon their personal experience and the actions NICA has demonstrated:

RESPONDENTS BELIEVE THAT NICA’S TOP PRIORITY IS TO:

39%

provide compensation for medical care and rehabilitation resulting from a birth-related neurological injury.

26%

maintain NICA’s financial status by limiting compensation to NICA participants.

20%

protect physicians who are involved in a birth-related neurological injury.

15%

administer NICA like a business, similar to an insurance company.

“Intent: their intent are not pure and it is not to help families.”

ADDITIONAL FEEDBACK

CLAIM PROCESS

“And they often communicate with us as if they are making things up as they go. They have no processes. For example, when the new parental award came as a result of the bill, they emailed us and asked us to write a letter about how we wanted the money and then to sign a perjury form.

A) Why wouldn't they make a worksheet or something instead of having every parent come up with a different letter?

B) Why do we have to have a perjury form about how we want our money? What would we be lying about?

C) During that time they answered close to no other questions about anything else we needed because they were swamped with all the letters coming in.

I went weeks without reimbursement.”

“What we had to go through to get CIMT covered (after denials and a lawyer getting involved etc) was ridiculous. Then even after it was approved (limited amount) the way they made the providers bill it (send to Medicaid, get rejected, some other step, then bill NICA) etc turned out to be such a pain that the providers didn't ever want to deal with us again.”

“It depends on what you are asking to be reimbursed. Caregiver reimbursement claims are generally handled consistently and on time. Claims for other items can require additional follow up.”

COMMUNICATION

“Our caseworker worked hard but there is often things that she could not answer.”

“Again, my nurse manager is consistent and organized. She communicates very regularly and follows up with me any time she has a question or needs clarification. She also keeps me informed of when she will be out of the office and provides an alternative contact.”

“Kim ALWAYS gets back to us in a timely manner with care and concern. She works diligently to help us and answer questions.”

“I find that we have dealt with many caring nurse/case managers over the years. I don't think they were ever not empathetic to our situation but I did feel like some worked harder than others to anticipate our needs.”

IMPROVEMENT SUGGESTION

“No “lifetime cap” on necessary home modification costs. (Costs rise over time, and participants may move various times over their lifespan).”



Agenda Item # 5.C. (Tab J)

Audits – Annual Financial

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Financial Statements
and Other Financial Information



Florida Birth Related Neurological Injury Compensation Association

*Years ended June 30, 2021 and 2020
with Report of Independent Auditors*

Florida Birth Related Neurological Injury Compensation Association

Financial Statements
and Other Financial Information

Years ended June 30, 2021 and 2020

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Report of Independent Auditors

Board of Directors
Florida Birth Related Neurological Injury Compensation Association

Report on the Financial Statements

We have audited the accompanying financial statements of Florida Birth Related Neurological Injury Compensation Association (NICA) which comprise the statements of net position as of June 30, 2021 and 2020, the related statements of revenues, expenses, and changes in net position, and cash flows for the years then ended, and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Page Two

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Florida Birth Related Neurological Injury Compensation Association, as of June 30, 2021 and 2020, and the changes in its financial position and its cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Other Matters

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the Management's Discussion and Analysis on pages 4 through 6 be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audits of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Other Information

The other financial information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the basic financial statements. Such information has been subjected to the auditing procedures applied in the audits of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the other financial information is fairly stated, in all material respects, in relation to the basic financial statements as a whole.

Page Three

Other Reporting Required by *Government Auditing Standards*

In accordance with *Government Auditing Standards*, we have also issued our report dated NEED DATE on our consideration of NICA's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of NICA's internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering NICA's internal control over financial reporting and compliance.

Tallahassee, Florida
NEED DATE

MANAGEMENT'S DISCUSSION AND ANALYSIS

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Our discussion and analysis of the Florida Birth-Related Neurological Injury Compensation Association's (NICA) financial performance provides an overview of the Association's financial activities for the fiscal year ended June 30, 2021. Please read it in conjunction with NICA's basic financial statements, which begin on page 11. NICA was established by 766.315, *Florida Statutes* to administer the Florida Birth-Related Neurological Injury Compensation Plan (the Plan). The Plan was established pursuant to the *Florida Birth-Related Neurological Injury Compensation Act*, Chapter 88-1, Laws of Florida, beginning January 1, 1989, and was created for the purpose of providing limited recovery, irrespective of fault, for certain birth-related neurological injuries. The Association and Plan referenced in the Florida Statutes are collectively known as NICA.

During the fiscal year ending June 30, 2021, the Florida Legislature passed SB 1786 which made substantial changes to the NICA program. As of June 30, 2021, approximately \$26 million in benefits related to SB 1786 had been paid. The actuarial estimate of the present value of additional benefits to be paid was approximately \$101 million and is reflected in Claims Reserves.

The following summarizes the key changes made by the act.

- 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.

MANAGEMENT'S DISCUSSION AND ANALYSIS (continued)

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- 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 paragraph 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

MANAGEMENT'S DISCUSSION AND ANALYSIS (continued)

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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, and 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:

MANAGEMENT'S DISCUSSION AND ANALYSIS (continued)

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- (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.

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MANAGEMENT'S DISCUSSION AND ANALYSIS (continued)

As of June 30, 2021, NICA's total assets increased by \$223,640,943 (or 15%), primarily due to increases in investments (see Table 1). Investments increased by \$227,996,140 (or 16%) resulting primarily from investment holding gains, gains realized on proceeds from securities sold and investment income earned. Receivable for securities sold decreased by \$5,414,853 (or 58%) due to timing differences that occur when securities are traded by investment managers but are not scheduled to settle until after the end of the fiscal year.

Total liabilities of NICA increased by \$140,410,644 (or 13%) as of June 30, 2021, primarily due to an increase in claims reserve (see Table 1). Claims reserve increased by \$145,000,000 (or 414%) primarily due to actuarial estimates of incurred but not reported (IBNR) claims for the current and prior birth years, increases in benefits passed by the Florida Legislature in SB 1786, new claims reported during the year and revisions to the estimates of accumulated reported claims made by management. The decrease in payable for securities purchased of \$4,689,569 (or -52%) is primarily due to timing differences that occur when securities are traded by the investment managers but are not scheduled to settle until after the end of the fiscal year.

Table 1 – Net Position

	2021	2020
Investments	\$ 1,685,487,875	\$ 1,457,491,735
Receivable for securities sold	3,985,821	9,400,674
Other assets	10,012,673	8,953,017
Total assets	<u>1,699,486,369</u>	<u>1,475,845,426</u>
Claims reserves	1,184,500,000	1,039,500,000
Payable for securities purchased	4,333,478	9,023,047
Other liabilities	860,416	760,203
Total liabilities	<u>1,189,693,894</u>	<u>1,049,283,250</u>
Net investment in capital assets	2,734,139	2,651,724
Restricted	<u>507,058,336</u>	<u>423,910,452</u>
Total net position	<u>\$ 509,792,475</u>	<u>\$ 426,562,176</u>

During the year, operating revenues from assessments increased by \$4,033,285 (or 15%) due to an increase in physician assessments.

Operating expenses increased by \$83,238,919 (or 72%) primarily due to an increase in claims expenses (see Table 2). Compared to the prior fiscal year, claims expenses increased by \$83,024,617 (or 74%). The higher claims expenses in the current fiscal year resulted primarily from increases in benefits passed by the Florida Legislature in SB 1786, which were factored into revisions of the estimated of accumulated reported claim made by management as well as increases in the actuarial estimates of incurred but not reported (IBNR) claims for the current and prior birth years.

MANAGEMENT’S DISCUSSION AND ANALYSIS (continued)

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NICA recorded net investment income of \$ 250,375,728 for the year ended June 30, 2021 (see Table 2). NICA’s net investment income was primarily comprised of unrealized gains of approximately \$173.4 million, realized gains of \$62.6 million, and interest and dividend income of approximately \$18.1 million and which were offset by investment management fees of approximately \$3.7 million.

The net effect of the increase in operating revenues and expenses and the recognition of investment income was an increase in net position of \$ 83,230,299 (see Tables 1 and 2).

Table 2 – Changes in Net Position

	<u>2020</u>	<u>2020</u>
Hospital assessments	\$ 3,175,050	\$ 3,191,400
Physician assessments	28,624,037	24,574,402
Total operating revenues	<u>31,799,087</u>	<u>27,765,802</u>
Claims expenses	194,782,059	111,757,442
Other operating expenses	4,162,457	3,948,155
Total operating expenses	<u>198,944,516</u>	<u>115,705,597</u>
Operating income (loss)	<u>(167,145,429)</u>	<u>(87,939,795)</u>
Investment income and other income	254,082,247	124,591,136
Investment fees	(3,706,519)	(3,308,839)
Total Nonoperating revenues and expenses	<u>250,375,728</u>	<u>121,282,297</u>
Change in net position	<u>\$ 83,230,299</u>	<u>\$ 33,342,502</u>

During the ordinary course of business, NICA is involved in litigation. In a lawsuit styled *United States of America ex rel. Arven et al. v. The Florida Birth-Related Neurological Injury Compensation Association et al.*, No. 19-CV-61053-WPD (S.D. Fla 2019), two relators (“Relators”) allege that NICA has violated the federal false claims act (“FCA”), 31 U.S.C. § 3729 *et seq.*, by treating itself as the “payor of last resort” vis-à-vis Medicaid. In other words, where a NICA participant is enrolled in Medicaid and where an expense is covered by both programs, NICA has historically taken the position that Medicaid, and not NICA, should pay for the expense. In Relators’ view, NICA is a “third party” under 42 U.S.C. § 1396a(a)(25)(A), and, therefore, should pay for expenses covered by Medicaid. By failing to do so, the lawsuit alleges NICA has violated the FCA. Relators seek treble damages under the FCA statutory framework. NICA has denied these allegations. The United States filed a notice advising the court that it is not intervening in the case but will continue an investigation into the issues. Should NICA be found to be a third party which must pay for participants’ expenses before Medicaid, the resulting change in the portion of benefits covered by Medicaid could impact NICA’s loss and loss adjustment expenses. In addition, NICA is working with the Agency for Health Care Administration to address the issues raised during the last legislative session regarding NICA’s relationship with Medicaid.

MANAGEMENT'S DISCUSSION AND ANALYSIS (continued)

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NICA has several substantial defenses to the legal claims asserted. Most notably, as an arm of the State of Florida, NICA is not subject to FCA liability. NICA's motion to dismiss the Relators' complaint was denied by the federal district court. The district court's decision is now on appeal before the United States Court of Appeals for the Eleventh Circuit, and the case is stayed pending resolution of the appeal. While NICA has confidence that the Eleventh Circuit will resolve the action in its favor, the ultimate outcome is uncertain. Accordingly, no provision has been made in the financial statements for this contingency.

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Florida Birth Related Neurological Injury Compensation Association

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Statements of Net Position

	June 30,	
	2021	2020
Assets		
Current assets:		
Cash and cash equivalents	\$ 605,717	\$ 271,160
Prepaid expenses and other current assets	<u>76,705</u>	<u>69,089</u>
Total current assets	682,422	340,249
Receivables for securities sold	3,985,821	9,400,674
Investment income receivable	4,361,512	3,850,394
Assessments receivable	2,234,600	2,110,650
Investments	1,685,487,875	1,457,491,735
Property and equipment, net	<u>2,734,139</u>	<u>2,651,724</u>
Total assets	<u>\$ 1,699,486,369</u>	<u>\$ 1,475,845,426</u>
Liabilities		
Current liabilities:		
Accounts payable and accrued expenses	\$ 506,516	\$ 405,152
Accrued investment fees	<u>353,900</u>	<u>355,051</u>
Total current liabilities	860,416	760,203
Payable for securities purchased	4,333,478	9,023,047
Claims reserves	<u>1,184,500,000</u>	<u>1,039,500,000</u>
Total liabilities	1,189,693,894	1,049,283,250
Net position:		
Net investment in capital assets	2,734,139	2,651,724
Restricted	<u>507,058,336</u>	<u>423,910,452</u>
Total net position	<u>509,792,475</u>	<u>426,562,176</u>
Total liabilities	<u>\$ 1,699,486,369</u>	<u>\$ 1,475,845,426</u>

See accompanying notes.

Florida Birth Related Neurological Injury Compensation Association

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Statements of Revenues, Expenses, and Changes in Net Position

	<u>Years ended</u> <u>2021</u>	<u>June 30,</u> <u>2020</u>
Changes in unrestricted net assets:		
Operating revenues:		
Hospital assessments	\$ 3,175,050	\$ 3,191,400
Physicians assessments	<u>28,624,037</u>	<u>24,574,402</u>
Total operating revenues	<u>31,799,087</u>	<u>27,765,802</u>
Operating expenses:		
Claims incurred	194,782,059	111,744,853
General and administrative expenses	3,382,091	3,329,497
Depreciation and amortization	780,366	618,658
Commutation expense	-	<u>12,589</u>
Total operating expenses	<u>198,944,516</u>	<u>115,705,597</u>
Operating loss	(167,145,429)	(87,939,795)
Nonoperating revenues (expenses):		
Investment income	254,082,247	124,591,136
Investment fees	<u>(3,706,519)</u>	<u>(3,308,839)</u>
Total nonoperating revenues (expenses)	<u>250,375,728</u>	<u>121,282,297</u>
Change in unrestricted net assets	83,230,299	33,342,502
Net position at beginning of year:	<u>426,562,176</u>	<u>393,219,674</u>
Net position at end of year	<u>\$ 509,792,475</u>	<u>\$ 426,562,176</u>

See accompanying notes.

Florida Birth Related Neurological Injury Compensation Association

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Statements of Cash Flows

	Years ended June 30,	
	2021	2020
Operating activities		
Cash received from hospitals and physicians	\$ 31,675,137	\$ 27,956,902
Cash received from reinsurers	-	15,990,545
Cash payments to claimants and vendors	(49,761,658)	(20,121,452)
Cash payments to service providers and suppliers	(1,772,271)	(1,748,821)
Cash payments to employees for service	(1,081,866)	(1,047,765)
Cash payments to employees for benefits	(454,605)	(432,665)
Net cash (used in) provided by operating activities	(21,395,263)	20,596,744
Capital financing activities		
Purchase of property and equipment	(862,783)	(778,795)
Net cash used in capital financing activities	(862,783)	(778,795)
Investing activities		
Purchase of investments	(831,688,671)	(1,064,671,785)
Proceeds from sales of investments	838,655,083	1,028,829,505
Receivable from securities sold	5,414,852	(4,650,626)
Payable for securities purchased	(4,689,568)	4,806,524
Interest and dividends from investments	18,608,227	19,404,260
Investment management fees	(3,707,320)	(3,418,649)
Net cash provided by (used in) investing activities	22,592,603	(19,700,771)
Net increase in cash and cash equivalents	334,557	117,178
Cash and cash equivalents at beginning of year	271,160	153,982
Cash and cash equivalents at end of year	\$ 605,717	\$ 271,160
Reconciliation of operating loss to net cash (used in) provided by operating activities		
Operating loss	\$ (167,145,429)	\$ (87,939,795)
Adjustments to reconcile change in net position to net cash (used in) provided by operating activities:		
Depreciation and amortization	780,366	618,658
Changes in operating assets and liabilities:		
Assessments receivable	(123,950)	191,100
Prepaid expenses and other current assets	(7,616)	(1,719)
Reinsurance recoverables	-	15,990,545
Accounts payable and accrued expenses	101,366	(192,045)
Claims reserves	145,000,000	91,930,000
Net cash (used in) provided by operating activities	\$ (21,395,263)	\$ 20,596,744

See accompanying notes.

Notes to Financial Statements

Years ended June 30, 2021 and 2020

1. Summary of Significant Accounting Policies**Nature of the Business**

The Florida Birth-Related Neurological Injury Compensation Association (the Association) was established by *Florida Statutes*, Chapter 766.315, in July 1, 1988 to administer the Florida Birth-Related Neurological Injury Compensation Plan (the Plan). The Plan was established by the Florida Birth-Related Neurological Injury Compensation Act (the Act), Chapter 88-1, Laws of Florida for the purpose of providing limited recovery, irrespective of fault, for certain birth-related neurological injuries beginning January 1, 1989. The Association and Plan are collectively known as NICA.

Initial funding for NICA was provided by hospital and physician assessments and a transfer of \$20 million from the Florida Department of Financial Service Insurance Regulatory Trust Fund.

If the hospital and physician assessments and the \$20 million transfer from the Insurance Regulatory Trust Fund are not sufficient to maintain NICA on an actuarially sound basis, an additional \$20 million is to be transferred from the Insurance Regulatory Trust Fund (Note 2). Also, if these funds are still not sufficient to maintain NICA on an actuarially sound basis, the Department of Financial Services, Office of Insurance Regulation may assess entities licensed in Florida to issue casualty insurance based on a rate of no greater than .25% of net direct premiums written.

In the event that management's estimate of the accumulated cost of reported claims (exclusive of family residential or custodial care as defined in Section 766.302, *Florida Statutes*) equals 80% of current funds, plus any additional funds available within 12 months, NICA shall not accept new claims without express authority from the Legislature. However, injuries occurring 18 months or more prior to the effective date of the suspension shall not be precluded.

Reporting Entity

Activities of NICA are reported in the state of Florida financial statements with other discretely presented component units.

Notes to Financial Statements

1. Summary of Significant Accounting Policies (continued)**Basis of Accounting**

NICA follows financial reporting requirements for enterprise funds, which use the accrual basis of accounting. Under this method, revenues are recorded when earned and expenses are recognized when they are incurred.

The financial statements have been prepared in conformity with the pronouncements of the Governmental Accounting Standards Board (GASB), including GASB Statement No. 14, *The Financial Reporting Entity*, which defines NICA as a component unit of the state of Florida.

Assessments

An assessment of \$250 per physician is required by *Florida Statutes* for all licensed physicians in the state of Florida, subject to certain exclusions. In addition, physicians have the option of electing to participate in NICA. Those physicians so electing are required to remit a total assessment of \$5,000. Certified nurse midwives who have paid 50% (or \$2,500) of the participating physician assessment and who are supervised by a participating physician may also participate in NICA. Additionally, each hospital licensed under Chapter 395, *Florida Statutes*, must pay NICA an assessment of \$50 per live infant delivered at the hospital during the prior calendar year, subject to certain exclusions.

Assessments are recognized at the time they are levied (annually) by NICA. The amount of physician and hospital assessments is subject to change based on the actuarial analysis of NICA. Any increase in assessment is recommended by the Board of Directors, but must be approved by the Office of Insurance Regulation.

Cash and Cash Equivalents

For purposes of the statement of cash flows, cash and interest bearing deposits with an original maturity of three months or less are considered cash equivalents. Investment purchases made through the Office of the Treasurer, State of Florida, are considered to be investments.

Cash consists of demand deposits with financial institutions. Deposits with financial institutions are insured by the Federal Deposit Insurance Corporation (FDIC) up to \$250,000 per depositor. Bank deposits at times may exceed federally insured limits. NICA has not experienced any losses in such accounts.

Notes to Financial Statements

1. Summary of Significant Accounting Policies (continued)**Cash and Cash Equivalents (continued)**

Additionally, NICA maintains certain demand deposit accounts with qualified public depositories. Qualified public depositories of public funds are required to provide collateral each month pursuant to Chapter 280.04, *Florida Statutes*. The collateral is held by the Florida Division of Treasury or other custodian with full legal rights maintained by the Florida Division of Treasury to transfer ownership. Any loss not covered by the pledged securities and deposit insurance would be assessed by the Florida Division of Treasury and paid by the other public depositories. Therefore, any amount of NICA's demand deposits in excess of FDIC protection would be fully insured or collateralized.

Assessments Receivable

The management of NICA considers assessments receivable to be fully collectible; accordingly, no allowance for doubtful accounts has been recorded.

Investments

Investments in debt and equity securities and futures are stated at fair value. Fair values are based on quoted values in custodian statements and/or quoted market prices. NICA investments made through the Office of the Treasurer, State of Florida, are included in the Florida Treasury Investment Pool (SPIA), which is a pool of investments of which NICA owns a share of the pool, not the underlying securities. Pooled investment shares are reported at fair value. The Auditor General, State of Florida, performs the operational audit of the activities and investments of the Office of the Treasurer. A copy of SPIA's most recent financial statements can be found at http://www.fltreasury.org/fs_01.html. Additionally, NICA invests in structured settlement annuities for selected claimants. These annuities are considered fixed income investments and are reported at fair value based on present value of future annuity payments. *Florida Statutes* and NICA's investment policy permit NICA to enter into securities lending transactions.

The financial instruments exposed to concentrations of credit risk consist primarily of its cash, cash equivalents, and investments. All investment transactions have credit exposure to the extent that a counterparty may default on an obligation of NICA. Credit risk is a consequence of carrying investment positions. To manage credit risk, NICA focuses primarily on higher quality, fixed income securities, limits its exposure in any one investment, and monitors quality.

Notes to Financial Statements

1. Summary of Significant Accounting Policies (continued)

Property and Equipment

Property and equipment is recorded at cost less accumulated depreciation. Property and equipment is depreciated over its estimated useful lives ranging from three to fifteen years using primarily the straight-line method. The building is depreciated over forty years using the straight-line method. NICA's policy is to capitalize asset acquisitions greater than \$500.

Claims Reserves

The liability for claims reserves is based on an actuarial determination and represents the estimated ultimate net cost of all unpaid reported and unreported claims and claim adjustment expenses. These liabilities are subject to the impact of future changes in claim severity and other factors. The unpaid claims and claim adjustment expense estimates are continually reviewed and, as adjustments become necessary, such adjustments are reflected in current operations. The ultimate settlement of claims and claim adjustment expenses may vary significantly from the actuarial estimates.

Net Position

The net position of NICA is restricted to carry out the public purpose of the program as provided under the Act.

Revenue Recognition

Operating revenues consist of hospital and physicians assessments and are recognized when earned. Nonoperating revenues consist of various forms of investment income.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Accordingly, actual results could differ from those estimates.

Notes to Financial Statements

1. Summary of Significant Accounting Policies (continued)**Subsequent Events**

The NICA has evaluated subsequent events through NEED DATE, the date the financial statements were available to be issued. During the period from June 30, 2021 to NEED DATE, the NICA did not have any material recognizable subsequent events.

2. Appropriation - Office of Insurance Regulation

Pursuant to *Florida Statutes*, Section 766.314(5)(b), the sum of \$20 million has been deposited in the Insurance Regulatory Trust Fund. The distribution of "up to \$20 million" to NICA has been authorized in the event that the assessments collected in accordance with *Florida Statutes*, Section 766.314(4), and prior appropriations are not sufficient to maintain NICA on an actuarially sound basis. The entire \$20 million is presently deposited in the Insurance Regulatory Trust Fund and is not reported by NICA.

3. Investments

The framework for measuring fair value provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1) and the lowest priority to unobservable inputs (Level 3). The three levels of the fair value hierarchy under GASB 72 are described as follows:

- Level 1: Quoted prices (unadjusted) in active markets for identical assets or liabilities that a government can access at the measurement date.
- Level 2: Inputs other than quoted prices included within Level 1 that are observable for an asset or liability, either directly or indirectly.
- Level 3: Unobservable inputs for an asset or liability.

Florida Birth Related Neurological Injury Compensation Association

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Notes to Financial Statements

3. Investments (continued)

The following table set forth by level, within the fair value hierarchy, NICA's assets at fair value as of June 30, 2021.

<u>Asset Type</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>	<u>Total</u>
Cash sweep - short term investment fund	\$ -	\$ -	\$ 33,668,167	\$ 33,668,167
Equities	348,512,311	-	-	348,512,311
Fixed income securities	64,998,814	382,466,139	-	447,464,953
Preferred securities	4,659,832	-	-	4,659,832
Annuities	-	-	21,095,664	21,095,664
Futures Contracts	470,445	-	-	470,445
	<u>418,641,402</u>	<u>382,466,139</u>	<u>54,763,831</u>	<u>855,871,372</u>
Other investments:				
Pooled investment in Florida State Treasury	-	-	-	283,184
Pooled investments reported at net asset value	-	-	-	829,262,035
Foreign currency	-	-	-	454,310
Other	-	-	-	(383,026)
Total assets at fair value	<u>\$ 418,641,402</u>	<u>\$ 382,466,139</u>	<u>\$ 54,763,831</u>	<u>\$ 1,685,487,875</u>

The following table set forth by level, within the fair value hierarchy, NICA's assets at fair value as of June 30, 2020.

<u>Asset Type</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>	<u>Total</u>
Cash sweep - short term investment fund	\$ -	\$ -	\$ 37,583,736	\$ 37,583,736
Equities	275,358,783	-	-	275,358,783
Fixed income securities	46,461,388	333,397,098	-	379,858,486
Preferred securities	3,960,406	-	-	3,960,406
Annuities	-	-	20,854,958	20,854,958
	<u>325,780,577</u>	<u>333,397,098</u>	<u>58,438,694</u>	<u>717,616,369</u>
Other investments:				
Pooled investment in Florida State Treasury	-	-	-	453,150
Pooled investments reported at net asset value	-	-	-	738,927,515
Foreign currency	-	-	-	494,724
Other	-	-	-	(23)
Total assets at fair value	<u>\$ 325,780,577</u>	<u>\$ 333,397,098</u>	<u>\$ 58,438,694</u>	<u>\$ 1,457,491,735</u>

Notes to Financial Statements

3. Investments (continued)

As of June 30, 2021, investments of NICA were as follows:

Types of Investments	Fair Value	Effective Duration (in Years)
Classifiable Investments:		
Annuities	\$ 21,095,664	n/a
Asset-backed securities	10,993,601	1.98
Corporate bonds	298,232,146	11.80
Federal Home Loan Mortgage	15,115,319	2.04
Federal National Mortgage Association	17,590,359	1.90
Futures contracts	470,445	n/a
Government National Mortgage Association	1,482,100	3.48
International government bonds	5,896,199	17.40
U.S. government bonds	64,998,814	17.06
Collateralized mortgage obligations	20,412,282	5.43
Municipal bonds	12,744,133	7.47
U.S. debt	574,296,417	n/a
Pooled investment in Florida State Treasury	283,184	2.6
Equity securities	<u>608,592,070</u>	n/a
Total classifiable investments	<u>1,652,202,733</u>	
Non-classifiable investments:		
Cash sweep - short term investment fund	33,285,141	
Other	<u>383,026</u>	
Total non-classifiable investments	<u>33,668,167</u>	
Total investments	<u>\$1,685,870,900</u>	

Notes to Financial Statements

3. Investments (continued)

As of June 30, 2020, investments of NICA were as follows:

Types of Investments		Effective
Classifiable Investments:	Fair Value	Duration
		(in Years)
Annuities	\$ 20,854,958	n/a
Asset-backed securities	12,345,762	1.98
Corporate bonds	258,728,283	11.80
Federal Home Loan Mortgage	19,826,971	2.04
Federal National Mortgage Association	13,070,744	1.90
Government National Mortgage Association	217,836	3.48
International government bonds	3,111,459	17.40
U.S. government bonds	46,461,388	17.06
Collateralized mortgage obligations	15,145,638	5.43
Municipal bonds	10,950,405	7.47
U.S. debt	536,880,589	n/a
Pooled investment in Florida State Treasury	453,150	.43
Equity securities	<u>481,860,839</u>	n/a
Total classifiable investments	<u>1,419,908,022</u>	
 Non-classifiable investments:		
Cash sweep - short term investment fund	37,583,736	
Other	<u>(23)</u>	
Total non-classifiable investments	<u>37,583,713</u>	
	 <u>\$1,457,491,735</u>	

Investments are diversified to minimize the risk of loss resulting from over compensation of assets in a specific maturity period, a single issuer, or an individual class of securities.

Credit risk is the risk that an issuer or other counterparty to an investment will not fulfill its obligation. To mitigate investment risk, investing is performed in accordance with investment policies adopted by the Board of Directors complying with Section 215.47, *Florida Statutes*. State statutes provide for investment of funds in a range of instruments, including federally guaranteed obligations, other federal agency obligations, certain state bonds, commercial paper, obligations of a Florida political subdivision as permitted by law, common stock, repurchase agreements, and reverse repurchase agreements.

Notes to Financial Statements

3. Investments (continued)

Custodial credit risk is the risk that, in the event of the failure of the counterparty, NICA will not be able to recover the value of its investments or collateral securities that are in the possession of an outside party. Custody of NICA's investments is currently maintained in NICA's name by Bank of New York Mellon pursuant to a custodial agreement. Additional accounts are maintained in NICA's name under separate agreements with BlackRock Institutional Trust Company, N.A. and the Division of Treasury of the state of Florida. Structured settlement annuities are maintained under agreements with Talcott Resolution Life Insurance Company, which has a Baa3 rating.

Generally, investing activities are performed by investment managers hired by NICA to implement established investment policies.

NICA's asset allocation policy is as follows:

<u>Asset Class</u>	<u>Permissible Range</u>
Fixed Income	58 - 70%
Equity	31 - 37%
Cash	0 - 3%

Credit Quality Rating. Section 215.47, *Florida Statutes*, and NICA's investment policy limits investments based on ratings provided by nationally recognized statistical rating services. Investments limited by ratings are as follows:

1. Commercial paper rated in the highest rating classification by one nationally recognized rating agency.
2. Municipal securities rated in the top four highest rating by two nationally recognized rating services.
3. Registered foreign bonds denominated in U.S. dollars rated in the top four rating classifications by two nationally recognized rating services.
4. Asset-backed securities rated in the highest rating classification by one nationally recognized rating service.

Notes to Financial Statements

3. Investments (continued)

Debt Security Type	Quality Rating Moody's	Fair Value
Asset-backed	Aaa	\$ 7,177,639
Asset-backed	NR	3,815,962
Collateralized mortgage obligation	Aaa	15,250,736
Collateralized mortgage obligation	NR	5,161,546
Corporate bonds	A1	15,329,717
Corporate bonds	A2	36,226,273
Corporate bonds	A3	35,171,936
Corporate bonds	Aa1	4,680,732
Corporate bonds	Aa2	2,411,649
Corporate bonds	Aa3	10,091,195
Corporate bonds	Aaa	573,161
Corporate bonds	Ba1	16,057,045
Corporate bonds	Ba2	774,000
Corporate bonds	Baa1	65,734,913
Corporate bonds	Baa2	76,114,021
Corporate bonds	Baa3	30,644,261
Corporate bonds	NR	4,423,246
Federal Home Loan Mortgage	Aaa	15,115,319
Federal National Mortgage Association	Aaa	17,590,359
Futures contracts	NR	470,445
Government National Mortgage Association	Aaa	1,482,100
International Government Bonds	A1	1,571,772
International Government Bonds	Baa1	4,324,427
Municipal bonds	A1	128,731
Municipal bonds	A3	620,986
Municipal bonds	Aa1	1,950,198
Municipal bonds	Aa2	2,718,789
Municipal bonds	Aa3	758,712
Municipal bonds	Aaa	1,323,386
Municipal bonds	Baa1	2,303,226
Municipal bonds	Baa2	496,776
Municipal bonds	NR	2,443,328
U.S. Debt	NR	574,296,417
U.S. Government Bond	Aaa	64,998,814
		\$1,022,231,817

Concentration of Credit Risk is the risk of loss attributed to the magnitude of NICA's investment in a single issuer. NICA assets are expected to be diversified across and within asset classes. However, NICA does not specify a limit on the amount that may be invested in any one issuer.

Notes to Financial Statements

3. Investments (continued)

Interest Rate Risk is the risk that changes in interest rates will adversely affect the fair value of an investment. Investments that are held for longer periods are subject to increased risk of adverse interest rate changes. For reporting purposes, NICA selects effective duration to disclose the portfolio's exposure to changes in interest rates. Duration is a measure of a fixed income's cash flows using present values, weighted for cash flow as a percentage of the investment's full price. Effective duration makes assumptions regarding the most likely timing and amounts of variable cash flows arising from such investments as callable bonds, prepayments, and variable rate debt.

NICA is invested in collateralized mortgage obligations with a fair market value of \$0. These securities and obligations are based on cash flows from payments on underlying mortgages. Therefore, they are sensitive to prepayments by mortgagees, which may result from a decline in interest rates.

Foreign Currency Risk is the risk that changes in the exchange rates will adversely affect the fair value of an investment. NICA's investment policy permits it to invest up to 18 percent of total investments in international equities. At June 30, 2021, NICA's exposure to possible foreign currency risk by monetary unit is as follows:

<u>Investment Type</u>	<u>Currency Type</u>	<u>Maturity</u>	<u>Fair Value</u>
Currency	Australian Dollar	n/a	\$ 1,013
	Brazil Real	n/a	3
	Canadian Dollar	n/a	4,753
	Euro Currency Unit	n/a	34,059
	Hong Kong Dollar	n/a	17,532
	Hungarian Forint	n/a	944
	Czech Koruna	n/a	342
	Israeli Shekel	n/a	1,120
	Japanese Yen	n/a	87,243
	Mexican Peso	n/a	948
	Polish Zloty	n/a	969
	Pound Sterling	n/a	3,305
	Singapore Dollar	n/a	1,015
	South African Rand	n/a	28,162
	South Korean Won	n/a	235,855
	Swedish Krona	n/a	10,441
Swiss Franc	n/a	26,041	
Turkish Lira	n/a	564	

(continued)

Notes to Financial Statements

3. Investments (continued)

Investment Type	Currency Type	Maturity	Fair Value
Common stock	Australian Dollar	n/a	9,834,230
	Brazil Real	n/a	2,625,187
	Canadian Dollar	n/a	7,579,086
	Czech Koruna	n/a	70,176
	Danish Krone	n/a	996,594
	Euro Currency Unit	n/a	51,335,291
	Hong Kong Dollar	n/a	28,326,219
	Hungarian Forint	n/a	221,361
	Indonesian Rupiah	n/a	497,167
	Israeli Shekel	n/a	210,826
	Japanese Yen	n/a	49,029,778
	Malaysian Ringgit	n/a	392,800
	Mexican Peso	n/a	1,901,527
	New Taiwan Dollar	n/a	7,214,030
	New Zealand Dollar	n/a	104,040
	Norwegian Krone	n/a	1,470,583
	Philippines Peso	n/a	14,885
	Polish Zloty	n/a	707,453
	Pound Sterling	n/a	34,735,976
	Singapore Dollar	n/a	3,833,785
	South African Rand	n/a	6,085,550
	South Korean Won	n/a	9,196,638
	Swedish Krona	n/a	13,235,198
Swiss Franc	n/a	6,639,711	
Thailand Baht	n/a	806,790	
Turkish Lira	n/a	842,849	
Preferred securities	Brazil Real	n/a	72,734
	Euro Currency Unit	n/a	4,587,100
			<u>\$ 243,021,873</u>

Pooled investments with the State Treasury and investments measured at net asset value are not subject to fair value hierarchy level classification under GASB Statement No. 72, *Fair Value Measurement and Application*.

Notes to Financial Statements

4. Property and Equipment

Activity within the property and equipment accounts consists of the following for the year ended June 30, 2021:

	<u>Beginning Balances</u>	<u>Additions</u>	<u>Deletions</u>	<u>Ending Balances</u>
Land	\$ 209,088	\$ -	\$ -	\$ 209,088
Building	320,585	-	-	320,585
Building improvements	88,411	-	-	88,411
Property and equipment	303,087	16,330	(61,400)	258,017
Software	<u>3,328,268</u>	<u>846,451</u>	<u>-</u>	<u>4,174,719</u>
	4,249,439	862,781	(61,400)	5,050,820
Less accumulated depreciation and amortization	<u>(1,597,715)</u>	<u>(780,366)</u>	<u>61,400</u>	<u>(2,316,681)</u>
	<u>\$ 2,651,724</u>	<u>\$ 82,415</u>	<u>\$ -</u>	<u>\$ 2,734,139</u>

Activity within the property and equipment accounts consists of the following for the year ended June 30, 2020:

	<u>Beginning Balances</u>	<u>Additions</u>	<u>Deletions</u>	<u>Ending Balances</u>
Land	\$ 209,088	\$ -	\$ -	\$ 209,088
Building	320,585	-	-	320,585
Building improvements	88,411	-	-	88,411
Property and equipment	293,581	21,564	(12,058)	303,087
Software	<u>2,571,037</u>	<u>757,231</u>	<u>-</u>	<u>3,328,268</u>
	3,482,702	778,795	(12,058)	4,249,439
Less accumulated depreciation and amortization	<u>(991,115)</u>	<u>(618,658)</u>	<u>12,058</u>	<u>(1,597,715)</u>
	<u>\$ 2,491,587</u>	<u>\$ 160,137</u>	<u>\$ -</u>	<u>\$ 2,651,724</u>

Depreciation and amortization expense was \$780,366 and \$618,658 for the years ended June 30, 2021 and 2020, respectively.

Notes to Financial Statements

5. Claims Reserves

Claims reserves are provided in amounts estimated to cover the custodial and rehabilitative costs resulting from certain birth-related neurological injuries of claimants of participating physicians and include an estimate of accumulated reported claims and claims incurred but not reported. The claim reserve is actuarially determined for birth years 1989 through June 30, 2021. The reserves utilize adjustment factors for the assumption of the annual investment return and the annual inflation rate.

A class action settlement agreement was entered into in September 2012, which was approved pursuant to a November 26, 2012 Final Judgment and Order by the Florida Circuit Court. The settlement terms may impact benefits payable to all parents or guardians of a child born with a “birth-related neurological injury” in the state of Florida during the time period of January 1, 1989 through June 6, 2002, who obtained a final order which imposed on NICA the “continuing obligation under provisions of Section 766.31, *Florida Statutes*, to pay future expenses as incurred.” The settlement agreement had both retrospective and prospective components.

Medical liability claims are volatile by nature. Although management of NICA believes that the estimate of the liability for losses and loss adjustment expenses is reasonable in the circumstances, uncertainty exists as to the ultimate amount that will be required for the payment of losses and claims. Due to the timeframe associated with the emergence of claims, the most recent two years' estimates have greater uncertainty. Accordingly, the ultimate closure of losses and the related loss adjustment expenses may vary significantly from the estimated amounts included in the accompanying financial statements.

In prior years, NICA maintained a reinsurance program which addressed both the frequency and severity of claims. As discussed at , excess insurance coverage for NICA expired effective December 31, 2003. During 2007, NICA invested in structured settlement annuities for selected claimants to fund a portion of its future obligations. The purpose of the annuities is to protect NICA against the financial effects of super longevity and to reduce the mortality risk on certain claims, which is statutorily borne by NICA. NICA has also adjusted claim reserves to provide for a risk margin in the event claims incurred but not yet reported significantly exceed management's best estimate. The risk margin was approximately \$75.5 million as of June 30, 2021.

Notes to Financial Statements

5. Claims Reserves (continued)

Activity in the liability for unpaid claims and claim adjustment expenses is summarized as follows:

	June 30,	
	<u>2021</u>	<u>2020</u>
Balance at beginning of year, including risk margin	\$ 1,039,500,000	\$ 947,570,000
Claims incurred related to:		
Current birth year	55,788,432	49,211,856
Prior birth years	<u>56,432,250</u>	<u>38,801,135</u>
Total claims incurred	<u>112,220,682</u>	<u>88,012,991</u>
Claims adjusted related to prior birth years	81,999,733	21,692,324
Claims paid related to:		
Prior years	<u>(49,782,059)</u>	<u>(19,814,852)</u>
Total claims paid	<u>(49,782,059)</u>	<u>(19,814,852)</u>
Change in unallocated loss adjustment expense	561,644	2,109,537
Change in risk margin reserve	-	<u>(70,000)</u>
Balance at end of year	<u>\$ 1,184,500,000</u>	<u>\$ 1,039,500,000</u>

6. Retirement Plan

Effective July 1, 2003, NICA established a defined contribution retirement plan, in the form of a 401(k) plan, which covers substantially all full time employees with at least one year of service. Contributions are accrued and funded on a current basis. NICA contributed 15% of the participating employees' salaries for the fiscal years ended June 30, 2021 and 2020. The contribution was \$162,107 and \$157,445 for the years ended June 30, 2021 and 2020, respectively.

7. Commitments and Contingencies

During the ordinary course of business, NICA is involved in litigation. In a lawsuit styled *United States of America ex rel. Arven et al. v. The Florida Birth-Related Neurological Injury Compensation Association et al.*, No. 19-CV-61053-WPD (S.D. Fla 2019), two relators (Relators) allege that NICA has violated the federal false claims act (FCA), 31 U.S.C. § 3729 *et seq.*, by treating itself as the “payor of last resort” vis-à-vis Medicaid. In other words, where a NICA participant is enrolled in Medicaid and where an expense is covered by both programs, NICA has historically taken the position that Medicaid, and not NICA, should pay for the expense. In Relators’ view, NICA is a “third party” under 42 U.S.C. § 1396a(a)(25)(A), and, therefore, should pay for expenses covered by Medicaid. By failing to do so, the lawsuit alleges NICA has violated the FCA. Relators seek treble damages under the FCA statutory framework.

Notes to Financial Statements

7. Commitments and Contingencies (continued)

NICA has denied these allegations. The United States filed a notice advising the court that it is not intervening in the case but will continue an investigation into the issues. Should NICA be found to be a third party which must pay for participants’ expenses before Medicaid, the resulting change in the portion of benefits covered by Medicaid could impact NICA’s loss and loss adjustment expenses. In addition, NICA is working with the Agency for Health Care Administration to address the issues raised during the last legislative session regarding NICA’s relationship with Medicaid.

NICA has several substantial defenses to the legal claims asserted. Most notably, as an arm of the state of Florida, NICA is not subject to FCA liability. NICA’s motion to dismiss the Relators’ complaint was denied by the federal district court. The district court’s decision is now on appeal before the United States Court of Appeals for the Eleventh Circuit, and the case is stayed pending resolution of the appeal. While NICA has confidence that the Eleventh Circuit will resolve the action in its favor, the ultimate outcome is uncertain. Accordingly, no provision has been made in the financial statements for this contingency.

8. Operating Leases

NICA leases office space under an operating lease expiring June 30, 2021. On June 21, 2021, NICA entered into a new operating lease, expiring June 30, 2024, with an option to renew for two three-year extensions. Monthly lease payments under this agreement are \$9,330.

Rent expense for the years ended June 30, 2021 and 2020, was \$19,853 and \$19,375, respectively. The future minimum lease payments for operating leases are as follows:

Year ended	
<u>June 30,</u>	
2022	\$ 111,720
2023	115,072
2024	<u>118,524</u>
	<u>\$ 345,316</u>

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Other Reports

Report of Independent Auditors on Internal Control Over Financial Reporting and
on Compliance and Other Matters Based on an Audit of Financial Statements
Performed in Accordance with *Government Auditing Standards*

Board of Directors
Florida Birth-Related Neurological Injury Compensation Association

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of Florida Birth-Related Neurological Injury Compensation Association (NICA), which comprise the statement of net position as of June 30, 2021, and the related statements of revenues, expenses, and changes in net position and cash flows for the year ended, and the related notes to the financial statements, and have issued our report thereon dated NEED DATE.

Internal Control Over Financial Reporting

In planning and performing our audit of the financial statements, we considered the NICA's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the NICA's internal control. Accordingly, we do not express an opinion on the effectiveness of the NICA's internal control.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

Page Two

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the NICA's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

Tallahassee, Florida
NEED DATE

Other Financial Information

Florida Birth-Related Neurological Injury Compensation Association

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Schedule of General and Administrative Expenses
Budget to Actual

Year ended June 30, 2021

	<u>Budget</u>	<u>Actual</u>	Variance - Positive (Negative)
Accounting services	\$ 80,800	\$ 83,227	\$ (2,427)
Bank charges	5,000	3,702	1,298
Dues and subscriptions	5,000	4,915	85
Insurance	242,000	235,677	6,323
Legal - general attorney fees and expenses	1,092,000	736,503	355,497
Legal - other expenses	52,800	60,778	(7,978)
Miscellaneous	800	(719)	1,519
Office supplies	8,850	7,478	1,372
Outreach	124,700	98,804	25,896
Payroll taxes	82,000	81,736	264
Postage	71,000	60,653	10,347
Printing services	43,650	47,248	(3,598)
Professional fees	356,000	549,020	(193,020)
Repairs and maintenance	98,900	90,805	8,095
Rent	18,600	19,853	(1,253)
Retirement	163,000	162,107	893
Salaries	1,105,000	1,109,439	(4,439)
Taxes and licenses	850	308	542
Telephone	17,000	18,054	(1,054)
Training and education	2,000	1,715	285
Travel	23,000	(62)	23,062
Utilities	10,500	10,850	(350)
	<u>\$ 3,603,450</u>	<u>\$ 3,382,091</u>	<u>\$ 221,359</u>

See report of independent auditors.