

Financial Statements



**Florida Birth-Related Neurological Injury Compensation Association**

*Years ended June 30, 2020 and 2019  
with Report of Independent Auditors*



Florida Birth-Related Neurological Injury Compensation Association

Financial Statements

Years ended June 30, 2020 and 2019

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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, 2020 and 2019, the related statements of revenues, expenses, and changes in net position, and cash flows for the year 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.

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## **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, 2020 and 2019, and the changes in its financial position and its cash flows for the year 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.

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**Other Reporting Required by *Government Auditing Standards***

In accordance with *Government Auditing Standards*, we have also issued our report dated August 20, 2020 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.

*Thomas Howell Ferguson P.A.*

Tallahassee, Florida  
August 20, 2020

## MANAGEMENT'S DISCUSSION AND ANALYSIS

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, 2020. Please read it in conjunction with NICA's basic financial statements, which begin on page 7. 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.

As of June 30, 2020, NICA's total assets increased by \$129,776,882 (or 10%), primarily due to increases in investments (see Table 1). Investments increased by \$141,701,572 (or 11%) resulting primarily from gains realized on proceeds from securities sold, investment holding gains, investment income earned, and assessments received during the fiscal year. Receivable for securities sold increased by \$4,650,626 (or 98%) 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. The decrease in reinsurance recoverable of \$15,990,545 resulted from the receipt of payment of the final award in the arbitration dispute with General Reinsurance Corporation regarding birth years 1999-2003 as discussed in Note 8.

Total liabilities of NICA increased by \$96,434,380 (or 10%) as of June 30, 2020, primarily due to an increase in claims reserve (see Table 1). Claims reserve increased by \$91,930,000 (or 10%) primarily due to actuarial estimates of incurred but not reported (IBNR) claims for the current birth year, new claims reported during the year and revisions to the estimates of accumulated reported claims made by management. The increase in payable for securities purchased of \$4,806,525 (or 114%) 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.

MANAGEMENT'S DISCUSSION AND ANALYSIS (continued)

**Table 1 – Net Position**

	<u>2020</u>	<u>2019</u>
Investments	\$ 1,457,491,735	\$ 1,315,790,163
Receivable for securities sold	9,400,674	4,750,048
Reinsurance recoverable	0	15,990,545
Other assets	8,953,017	9,537,788
Total assets	<u>1,475,845,426</u>	<u>1,346,068,544</u>
Claims reserves	1,039,500,000	947,570,000
Payable for securities purchased	9,023,047	4,216,522
Other liabilities	760,203	1,062,348
Total liabilities	<u>1,049,283,250</u>	<u>952,848,870</u>
Net investment in capital assets	2,651,724	2,491,587
Restricted	<u>423,910,452</u>	<u>390,728,087</u>
Total net position	<u>\$ 426,562,176</u>	<u>\$ 393,219,674</u>

During the year, operating revenues from assessments increased \$775,842 (or 3%) due to an increase in physician assessments.

Operating expenses increased by \$70,434,551 (or 156%) primarily due to an increase in claims expenses (see Table 2). Compared to the prior fiscal year, claims expenses increased by \$69,202,271 (or 163%). The higher claims expenses in the current fiscal year resulted primarily from claims reported in the current fiscal year. Changes in estimated utilization and changes in life expectancy estimates which were factored into revisions of the estimated of accumulated reported claim made by management were also higher in the current fiscal year.

NICA recorded net investment income of \$121,282,297 for the year ended June 30, 2020 (see Table 2). NICA's net investment income was primarily comprised of realized gains of \$76.3 million, unrealized gains of approximately \$28.3 million and interest and dividend income of approximately \$20 million and which were offset by investment management fees of approximately \$3.3 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 \$33,342,502 (see Tables 1 and 2).

MANAGEMENT’S DISCUSSION AND ANALYSIS (continued)

**Table 2 – Changes in Net Position**

	<u>2020</u>	<u>2019</u>
Hospital assessments	\$ 3,191,400	\$ 3,193,800
Physician assessments	24,574,402	23,796,160
Total operating revenues	<u>27,765,802</u>	<u>26,989,960</u>
Claims expenses	111,757,442	42,555,171
Other operating expenses	3,948,155	2,715,875
Total operating expenses	<u>115,705,597</u>	<u>45,271,046</u>
Operating income (loss)	<u>(87,939,795)</u>	<u>(18,281,086)</u>
Investment income and other income	124,591,136	106,706,461
Investment fees	(3,308,839)	(3,236,594)
Total Nonoperating revenues and expenses	<u>121,282,297</u>	<u>103,469,867</u>
Change in net position	<u>\$ 33,342,502</u>	<u>\$ 85,188,781</u>

During the ordinary course of business, NICA is involved in litigation. In a lawsuit filed in the Southern District of Florida, the Plaintiffs/Relators allege that NICA violated the federal False Claims Act (“FCA”), 31 U.S.C. § 3729 *et seq.*, because it does not pay for expenses covered by Medicaid as the primary payor. In the Relators’ view, NICA is a “third party” under 42 U.S.C. § 1396a(a)(25)(A), and as such, it should pay for expenses that would otherwise be covered by Medicaid because it is the “payor of last resort.” The Plaintiffs/Relators seek treble damages.

The Plaintiff/Relator’s position represents, in NICA’s view, a fundamental shift in the manner in which the Centers for Medicare and Medicaid Services has historically interpreted and enforced the federal regulations on third party liability and how NICA has operated for decades. 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. NICA is defending the case vigorously, disagrees with all allegations and has moved to dismiss the lawsuit. Discovery has been stayed pending resolution of NICA’s motion to dismiss. The United States filed a notice advising the court that it is not intervening at this time but will continue an investigation into the issues. At this time, the ultimate outcome is uncertain. Accordingly, no provision has been made in the financial statements for this contingency.

# Florida Birth-Related Neurological Injury Compensation Association

## Statements of Net Position

	<b>June 30,</b>	
	<b>2020</b>	<b>2019</b>
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 271,160	\$ 153,982
Prepaid expenses and other current assets	69,089	67,370
Total current assets	340,249	221,352
Receivable for securities sold	9,400,674	4,750,048
Investment income receivable	3,850,394	4,523,099
Assessments receivable	2,110,650	2,301,750
Investments	1,457,491,735	1,315,790,163
Reinsurance recoverables	-	15,990,545
Property and equipment, net	2,651,724	2,491,587
Total assets	<b>\$ 1,475,845,426</b>	<b>\$ 1,346,068,544</b>
<b>Liabilities and net position</b>		
Current liabilities:		
Accounts payable and accrued expenses	\$ 405,152	\$ 597,199
Accrued investment fees	355,051	465,149
Total current liabilities	760,203	1,062,348
Payable for securities purchased	9,023,047	4,216,522
Claims reserves	1,039,500,000	947,570,000
Total liabilities	1,049,283,250	952,848,870
Net position:		
Net investment in capital assets	2,651,724	2,491,587
Restricted	423,910,452	390,728,087
Total net position	426,562,176	393,219,674
Total liabilities and net position	<b>\$ 1,475,845,426</b>	<b>\$ 1,346,068,544</b>

*See accompanying notes.*

Florida Birth-Related Neurological Injury Compensation Association

Statements of Revenues, Expenses, and Changes in Net Position

	<b>Years ended June 30, 2020</b>	<b>2019</b>
<b>Changes in net position:</b>		
Operating revenues:		
Hospital assessments	\$ 3,191,400	\$ 3,193,800
Physicians assessments	<u>24,574,402</u>	<u>23,796,160</u>
Total operating revenues	<u>27,765,802</u>	26,989,960
Operating expenses:		
Claims incurred	111,744,853	39,962,245
General and administrative expenses	3,329,497	2,241,136
Depreciation and amortization	618,658	474,739
Commutation expense	<u>12,589</u>	<u>2,592,926</u>
Total operating expenses	<u>115,705,597</u>	<u>45,271,046</u>
Operating loss	(87,939,795)	(18,281,086)
Nonoperating revenues (expenses):		
Investment income	124,591,136	106,706,461
Investment fees	<u>(3,308,839)</u>	<u>(3,236,594)</u>
Total nonoperating revenues	<u>121,282,297</u>	<u>103,469,867</u>
Change in net position	33,342,502	85,188,781
Net position at beginning of year	<u>393,219,674</u>	<u>308,030,893</u>
Net position at end of year	<u>\$ 426,562,176</u>	<u>\$ 393,219,674</u>

*See accompanying notes.*

# Florida Birth-Related Neurological Injury Compensation Association

## Statements of Cash Flows

	<b>Years ended June 30,</b>	
	<b>2020</b>	<b>2019</b>
<b>Operating activities</b>		
Cash received from hospitals and physicians	\$ 27,956,902	\$ 26,697,560
Cash received from reinsurers	15,990,545	-
Cash payments to claimants and vendors	(20,121,452)	(19,371,668)
Cash payments to service providers and suppliers	(1,748,821)	(920,831)
Cash payments to employees for service	(1,047,765)	(974,358)
Cash payments to employees for benefits	(432,665)	(356,068)
Net cash provided by operating activities	<b>20,596,744</b>	<b>5,074,635</b>
<b>Capital financing activities</b>		
Purchase of property and equipment	(778,795)	(763,556)
Net cash used in capital financing activities	<b>(778,795)</b>	<b>(763,556)</b>
<b>Investing activities</b>		
Purchase of investments	(1,064,671,785)	(663,533,637)
Proceeds from sales of investments	1,028,829,505	644,681,004
Receivable from securities sold	(4,650,626)	(4,120,174)
Payable for securities purchased	4,806,524	1,518,738
Interest and dividends from investments	19,404,260	20,399,713
Investment management fees	(3,418,649)	(3,231,758)
Net cash used in investing activities	<b>(19,700,771)</b>	<b>(4,286,114)</b>
Net increase in cash and cash equivalents	117,178	24,965
Cash and cash equivalents at beginning of year	153,982	129,017
Cash and cash equivalents at end of year	<b>\$ 271,160</b>	<b>\$ 153,982</b>
Reconciliation of operating loss to net cash provided by operating activities		
Operating loss	\$ (87,939,795)	\$ (18,281,086)
Adjustments to reconcile change in net position to net cash provided by operating activities:		
Depreciation and amortization	618,658	474,739
Changes in operating assets and liabilities:		
Assessments receivable	191,100	(121,950)
Prepaid expenses and other current assets	(1,719)	(21,555)
Reinsurance recoverables	15,990,545	6,115,329
Accounts payable and accrued expenses	(192,045)	69,608
Claims reserves	91,930,000	17,010,000
Assessments refundable	-	(170,450)
Net cash provided by operating activities	<b>\$ 20,596,744</b>	<b>\$ 5,074,635</b>

*See accompanying notes.*

# Florida Birth-Related Neurological Injury Compensation Association

## Notes to Financial Statements

Years ended June 30, 2020 and 2019

### 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.

# Florida Birth-Related Neurological Injury Compensation Association

## 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.

# Florida Birth-Related Neurological Injury Compensation Association

## 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](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.

# Florida Birth-Related Neurological Injury Compensation Association

## 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.

# Florida Birth-Related Neurological Injury Compensation Association

## Notes to Financial Statements

### 1. Summary of Significant Accounting Policies (continued)

#### Subsequent Events

The NICA has evaluated subsequent events through August 20, 2020, the date the financial statements were available to be issued. During the period from June 30, 2020 to August 20, 2020, the NICA did not have any material recognizable subsequent events other than those disclosed in Note 10.

### 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

## 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, 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>
<b>Other investments:</b>				
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>

The following table set forth by level, within the fair value hierarchy, NICA's assets at fair value as of June 30, 2019.

<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	\$ -	\$ -	\$ 27,807,171	\$ 27,807,171
Equities	320,081,035	-	-	320,081,035
Fixed income securities	57,373,779	279,173,097	-	336,546,876
Futures contracts	204,734	-	-	204,734
Preferred securities	2,879,447	-	-	2,879,447
Annuities	-	-	15,607,185	15,607,185
	<u>380,538,995</u>	<u>279,173,097</u>	<u>43,414,356</u>	<u>703,126,448</u>
<b>Other investments:</b>				
Pooled investment in Florida State Treasury	-	-	-	3,097,609
Pooled investments reported at net asset value	-	-	-	609,929,349
Foreign currency	-	-	-	506,413
Other	-	-	-	(869,656)
Total assets at fair value	<u>\$ 380,538,995</u>	<u>\$ 279,173,097</u>	<u>\$ 43,414,356</u>	<u>\$ 1,315,790,163</u>

# Florida Birth-Related Neurological Injury Compensation Association

## Notes to Financial Statements

### 3. Investments (continued)

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

<b>Types of Investments</b>	<b>Fair Value</b>	<b>Effective Duration (in Years)</b>
<b>Classifiable Investments:</b>		
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>	
<b>Non-classifiable investments:</b>		
Cash sweep - short term investment fund	37,583,736	
Other	<u>(23)</u>	
Total non-classifiable investments	<u>37,583,713</u>	
Total investments	<u>\$1,457,491,735</u>	

# Florida Birth-Related Neurological Injury Compensation Association

## Notes to Financial Statements

### 3. Investments (continued)

As of June 30, 2019, investments of NICA were as follows:

<b>Types of Investments</b>	<b>Fair Value</b>	<b>Effective Duration (in Years)</b>
<b>Classifiable Investments:</b>		
Annuities	\$ 15,607,185	n/a
Asset-backed securities	11,144,422	2.24
Corporate bonds	215,864,061	11.00
Federal Home Loan Mortgage	14,479,929	2.33
Federal National Mortgage Association	13,167,414	2.23
Futures contracts	204,734	n/a
International government bonds	841,263	14.42
U.S. government bonds	57,373,779	11.87
Collateralized mortgage obligations	14,770,868	4.91
Municipal bonds	8,905,140	6.00
U.S. debt	491,287,497	n/a
Pooled investment in Florida State Treasury	3,097,609	2.71
Equity securities	<u>442,108,748</u>	n/a
Total classifiable investments	<u>1,288,852,649</u>	
<b>Non-classifiable investments:</b>		
Cash sweep - short term investment fund	27,807,171	
Other	<u>(869,657)</u>	
Total non-classifiable investments	<u>26,937,514</u>	
	<u>\$1,315,790,163</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.

# Florida Birth-Related Neurological Injury Compensation Association

## 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.

# Florida Birth-Related Neurological Injury Compensation Association

## Notes to Financial Statements

### 3. Investments (continued)

<u>Debt Security Type</u>	<u>Quality Rating Moody's</u>	<u>Fair Value</u>
Asset-backed	Aaa	\$ 6,534,086
Asset-backed	NR	5,811,676
Collateralized mortgage obligation	Aaa	12,243,593
Collateralized mortgage obligation	NR	2,902,045
Corporate bonds	A1	13,973,324
Corporate bonds	A2	30,182,975
Corporate bonds	A3	50,285,019
Corporate bonds	Aa1	3,978,825
Corporate bonds	Aa2	3,772,781
Corporate bonds	Aa3	7,909,500
Corporate bonds	Aaa	1,922,003
Corporate bonds	Ba1	14,486,421
Corporate bonds	Ba2	184,313
Corporate bonds	Baa1	53,301,007
Corporate bonds	Baa2	51,497,758
Corporate bonds	Baa3	23,445,124
Corporate bonds	NR	3,789,233
Federal Home Loan Mortgage	Aaa	19,826,971
Federal National Mortgage Association	Aaa	13,070,744
Government National Mortgage Association	Aaa	217,836
International Government Bonds	A1	1,028,272
International Government Bonds	Baa1	2,083,187
Municipal bonds	A1	131,628
Municipal bonds	Aa1	3,023,446
Municipal bonds	Aa2	2,248,491
Municipal bonds	Aa3	1,265,002
Municipal bonds	Aaa	258,213
Municipal bonds	Baa2	812,251
Municipal bonds	Baa3	2,235,228
Municipal bonds	NR	976,146
Other U.S. agency securities	Aaa	46,461,388
Pooled investments in Florida State Treasury	AA-	453,150
		<u>\$ 380,311,636</u>

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.

# Florida Birth-Related Neurological Injury Compensation Association

## 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 \$15,146,000. 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, 2020, 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	\$ 929
	Brazil Real	n/a	4
	Canadian Dollar	n/a	3,978
	Euro Currency Unit	n/a	20,495
	Hong Kong Dollar	n/a	2,350
	Hungarian Forint	n/a	885
	Israeli Shekel	n/a	1,054
	Japanese Yen	n/a	25,063
	Malaysian Ringgit	n/a	176
	Mexican Peso	n/a	817
	New Taiwan Dollar	n/a	173,899
	Polish Zloty	n/a	933
	Pound Sterling	n/a	610
	Singapore Dollar	n/a	80,870
	South African Rand	n/a	23,143
	South Korean Won	n/a	123,857
	Swedish Krona	n/a	9,584
	Swiss Franc	n/a	25,364
	Turkish Lira	n/a	715

(continued)

Florida Birth-Related Neurological Injury Compensation Association

Notes to Financial Statements

3. Investments (continued)

<u>Investment Type</u>	<u>Currency Type</u>	<u>Maturity</u>	<u>Fair Value</u>
Common stock	Australian Dollar	n/a	9,722,999
	Brazil Real	n/a	2,340,581
	Canadian Dollar	n/a	5,133,314
	Czech Koruna	n/a	106,017
	Danish Krone	n/a	438,506
	Euro Currency Unit	n/a	42,603,549
	Hong Kong Dollar	n/a	18,960,635
	Hungarian Forint	n/a	325,543
	Indonesian Rupiah	n/a	462,221
	Israeli Shekel	n/a	195,199
	Japanese Yen	n/a	45,583,473
	Malaysian Ringgit	n/a	465,499
	Mexican Peso	n/a	1,479,386
	New Taiwan Dollar	n/a	4,041,748
	New Zealand Dollar	n/a	102,730
	Norwegian Krone	n/a	754,437
	Philippines Peso	n/a	11,080
	Polish Zloty	n/a	714,646
	Pound Sterling	n/a	25,600,747
	Singapore Dollar	n/a	3,735,733
	South African Rand	n/a	6,238,015
	South Korean Won	n/a	4,971,999
	Swedish Krona	n/a	9,648,647
Swiss Franc	n/a	5,080,434	
Thailand Baht	n/a	1,163,613	
Turkish Lira	n/a	649,684	
Preferred securities	Brazil Real	n/a	229,429
	Euro Currency Unit	n/a	3,730,977
			<u>\$ 194,985,567</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*.

# Florida Birth-Related Neurological Injury Compensation Association

## 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, 2020:

	<b>Beginning Balances</b>	<b>Additions</b>	<b>Deletions</b>	<b>Ending Balances</b>
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>

Activity within the property and equipment accounts consists of the following for the year ended June 30, 2019:

	<b>Beginning Balances</b>	<b>Additions</b>	<b>Deletions</b>	<b>Ending Balances</b>
Land	\$ 209,088	\$ -	\$ -	\$ 209,088
Building	320,585	-	-	320,585
Building improvements	82,485	5,926	-	88,411
Property and equipment	321,173	9,327	(36,919)	293,581
Software	<u>1,822,508</u>	<u>748,529</u>	<u>-</u>	<u>2,571,037</u>
	2,755,839	763,782	(36,919)	3,482,702
Less accumulated depreciation and amortization	<u>(553,069)</u>	<u>(474,739)</u>	<u>36,693</u>	<u>(991,115)</u>
	<u>\$ 2,202,770</u>	<u>\$ 289,043</u>	<u>\$ (226)</u>	<u>\$ 2,491,587</u>

Depreciation and amortization expense was \$618,658 and \$474,739 for the years ended June 30, 2020 and 2019, respectively.

# Florida Birth-Related Neurological Injury Compensation Association

## 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, 2020. 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 Note 8, 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 \$75.50 million as of June 30, 2020.

# Florida Birth-Related Neurological Injury Compensation Association

## Notes to Financial Statements

### 5. Claims Reserves (continued)

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

	<b>June 30,</b>	
	<b>2020</b>	<b>2019</b>
Balance at beginning of year, including risk margin	<b>\$ 947,570,000</b>	\$ 930,560,000
Claims incurred related to:		
Current birth year	49,211,856	47,100,854
Prior birth years	38,801,135	(23,364,370)
Total claims incurred	<b>88,012,991</b>	23,736,484
Claims adjusted related to prior birth years	21,692,324	8,616,294
Claims paid related to:		
Prior years	(19,814,852)	(16,836,915)
Total claims paid	<b>(19,814,852)</b>	(16,836,915)
Change in unallocated loss adjustment expense	2,109,537	(515,863)
Change in risk margin reserve	(70,000)	2,010,000
Balance at end of year	<b>\$ 1,039,500,000</b>	\$ 947,570,000

### 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, 2020 and 2019. The contribution was \$157,445 and \$137,018 for the years ended June 30, 2020 and 2019, respectively.

### 7. Commitments and Contingencies

During the ordinary course of business, NICA is involved in litigation. In a lawsuit filed in the Southern District of Florida, the Plaintiffs/Relators allege that NICA violated the federal False Claims Act ("FCA"), 31 U.S.C. § 3729 et seq., because it does not pay for expenses covered by Medicaid as the primary payor. In the Relators' view, NICA is a "third party" under 42 U.S.C. § 1396a(a)(25)(A), and as such, it should pay for expenses that would otherwise be covered by Medicaid because it is the "payor of last resort." The Plaintiffs/Relators seek treble damages.

# Florida Birth-Related Neurological Injury Compensation Association

## Notes to Financial Statements

### **7. Commitments and Contingencies (continued)**

The Plaintiff/Relator's position represents, in NICA's view, a fundamental shift in the manner in which the Centers for Medicare and Medicaid Services has historically interpreted and enforced the federal regulations on third party liability and how NICA has operated for decades. 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. NICA is defending the case vigorously, disagrees with all allegations and has moved to dismiss the lawsuit. Discovery has been stayed pending resolution of NICA's motion to dismiss. The United States filed a notice advising the court that it is not intervening at this time but will continue an investigation into the issues. At this time, the ultimate outcome is uncertain. Accordingly, no provision has been made in the financial statements for this contingency.

### **8. Excess Insurance**

NICA had been engaged in an arbitration dispute with General Reinsurance Corporation (Gen Re) who reinsured certain NICA losses for birth years 1999-2003. NICA commenced a commutation proceeding on March 15, 2016 pursuant to its reinsurance agreement with Gen Re to invoke the dispute resolution provisions of the agreement to pursue a reinsurance recovery. On April 7, 2016, Gen Re commenced an arbitration proceeding under a different provision of the reinsurance agreement and asserted seven substantive challenges to NICA's calculated reserves, but did not identify any specific disputed amounts.

The parties held several hearings on the merits in 2018 and 2019, the last of which was held on June 21, 2019. The arbitration panel issued interim awards in 2018 and 2019 and then a final award on June 28, 2019 awarding NICA \$15,990,545. Gen Re paid that amount on July 30, 2019 and the arbitration has concluded.

### **9. Operating Leases**

NICA leases office space under an operating lease expiring June 30, 2021, with an option to renew for two one-year extensions. Monthly lease payments under this agreement are \$1,550.

Rent expense for the years ended June 30, 2020 and 2019, was \$19,375 and \$15,500, respectively. The total future minimum lease payments for operating leases in 2021 is \$18,600.

# Florida Birth-Related Neurological Injury Compensation Association

## Notes to Financial Statements

### **10. Other Matters**

In late 2019, a novel strain of coronavirus was reported in Wuhan, Hubei, China. The World Health Organization determined the resulting outbreak of COVID-19, the disease caused by this novel coronavirus, to be a pandemic. The pandemic is disrupting supply chains worldwide as national and local governments implement measures intended to slow the spread of COVID-19, with production and sales across a range of industries impacted in different ways. The extent of the impact of COVID-19 on NICA's operations and its financial performance will depend on certain developments outside of NICA's control, including the duration and spread of the outbreak; its impact on medical professionals subject to assessment, employees, and vendors; and broader economic conditions, all of which are uncertain and cannot be predicted at this time.

## 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, 2020, 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 August 20, 2020.

**Internal Control Over Financial Reporting**

In planning and performing our audit of the financial statements, we considered NICA's internal control over financial reporting (internal control) to determine the 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 NICA's internal control. Accordingly, we do not express an opinion on the effectiveness of 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.

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## **Compliance and Other Matters**

As part of obtaining reasonable assurance about whether 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 determination of financial statement amounts. 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  
August 20, 2020