

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

**Contents**

<b>Report of Independent Auditors</b> .....	1
<b>Management's Discussion and Analysis</b> .....	4
<b>Financial Statements</b>	
Statements of Net Position .....	11
Statements of Revenues, Expenses, and Changes in Net Position .....	12
Statements of Cash Flows .....	13
Notes to Financial Statements .....	14
<b>Other Reports</b>	
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 <i>Government Auditing Standards</i> .....	30
<b>Other Financial Information</b>	
Schedule of General and Administrative Expenses .....	32

## 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 Management's Discussion and Analysis on pages 4 through 10 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 October 28, 2021 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  
October 28, 2021

## 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, 2021. Please read it in conjunction with NICA's basic financial statements, which begin on page 11. NICA was established by *Florida Statutes 766.315* 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 as a result of SB 1786 was approximately \$101 million and is reflected in Claims Reserves.

The following summarizes the key changes made by the legislative changes.

- 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 seven 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)

- 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 shall increase by three percent. Parents or legal guardians who received an award 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 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 NICA must sign and submit a statement attesting that they do not have a conflict of interest. As a condition of employment, all prospective employees must sign and submit to NICA 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 NICA 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 NICA, or which is under consideration for a contract. Any senior manager or executive director of NICA 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 NICA for two years after retirement or termination of employment from NICA.

## MANAGEMENT'S DISCUSSION AND ANALYSIS (continued)

- Directors are limited to no more than 6 consecutive years of service on the board.
- The board is increased to seven 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 of the state of Florida 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, NICA shall give notice of any board meeting by publication on NICA'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 NICA'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 NICA employee.
  - (c) A summary of reimbursement disputes and resolutions.

## MANAGEMENT'S DISCUSSION AND ANALYSIS (continued)

(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.

• On or before November 1, 2021, and by each November 1 thereafter, NICA 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 NICA.
- (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 *Florida Statutes* 409.910, relative to the Florida Birth-Related Neurological Injury Compensation Plan established under *Florida Statutes* 766.303 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 *Florida Statutes* 766.31(1)(a)1. and 3., and recoveries due the agency under *Florida Statutes* 409.910. 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 NICA.

## 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 14%) 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	1,699,486,369	1,475,845,426
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	1,189,693,894	1,049,283,250
Net investment in capital assets	2,734,139	2,651,724
Restricted	507,058,336	423,910,452
Total net position	\$ 509,792,475	\$ 426,562,176

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 accumulated reported claims 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)

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, 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**

	<b>2021</b>	<b>2020</b>
Hospital assessments	<b>\$ 3,175,050</b>	<b>\$ 3,191,400</b>
Physician assessments	<b>28,624,037</b>	<b>24,574,402</b>
Total operating revenues	<b>31,799,087</b>	<b>27,765,802</b>
Claims expenses	<b>194,782,059</b>	<b>111,757,442</b>
Other operating expenses	<b>4,162,457</b>	<b>3,948,155</b>
Total operating expenses	<b>198,944,516</b>	<b>115,705,597</b>
Operating income (loss)	<b>(167,145,429)</b>	<b>(87,939,795)</b>
Investment income and other income	<b>254,082,247</b>	<b>124,591,136</b>
Investment fees	<b>(3,706,519)</b>	<b>(3,308,839)</b>
Total nonoperating revenues and expenses	<b>250,375,728</b>	<b>121,282,297</b>
Change in net position	<b>\$ 83,230,299</b>	<b>\$ 33,342,502</b>

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)

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.

## Financial Statements

# Florida Birth Related Neurological Injury Compensation Association

## Statements of Net Position

	<b>June 30,</b>	
	<b>2021</b>	<b>2020</b>
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 605,717	\$ 271,160
Prepaid expenses and other current assets	76,705	69,089
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	2,734,139	2,651,724
Total assets	<b>\$ 1,699,486,369</b>	<b>\$ 1,475,845,426</b>
<b>Liabilities</b>		
Current liabilities:		
Accounts payable and accrued expenses	\$ 506,516	\$ 405,152
Accrued investment fees	353,900	355,051
Total current liabilities	860,416	760,203
Payable for securities purchased	4,333,478	9,023,047
Claims reserves	1,184,500,000	1,039,500,000
Total liabilities	1,189,693,894	1,049,283,250
Net position:		
Net investment in capital assets	2,734,139	2,651,724
Restricted	507,058,336	423,910,452
Total net position	509,792,475	426,562,176
Total liabilities	<b>\$ 1,699,486,369</b>	<b>\$ 1,475,845,426</b>

*See accompanying notes.*

Florida Birth Related Neurological Injury Compensation Association

Statements of Revenues, Expenses, and Changes in Net Position

	<u>Years ended</u> <u>2021</u>	<u>June 30,</u> <u>2020</u>
<b>Changes in unrestricted net assets:</b>		
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

## Statements of Cash Flows

	<b>Years ended June 30,</b>	
	<b>2021</b>	<b>2020</b>
<b>Operating activities</b>		
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
<b>Capital financing activities</b>		
Purchase of property and equipment	(862,783)	(778,795)
Net cash used in capital financing activities	(862,783)	(778,795)
<b>Investing activities</b>		
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.*

# Florida Birth Related Neurological Injury Compensation Association

## 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.

# 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.

#### 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.

# Florida Birth Related Neurological Injury Compensation Association

## Notes to Financial Statements

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

#### **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

NICA has evaluated subsequent events through October 28, 2021, the date the financial statements were available to be issued. During the period from June 30, 2021 to October 28, 2021, 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

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

# Florida Birth Related Neurological Injury Compensation Association

## Notes to Financial Statements

### 3. Investments (continued)

As of June 30, 2021, 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	\$ 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>	
<b>Non-classifiable investments:</b>		
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>	

# 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>	
	<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.

# 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	\$ 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
		<u>\$1,022,231,817</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. 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)

# 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	9,834,230
	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*.

# 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, 2021:

	<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	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:

	<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>

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

# 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>	
	<u><b>2021</b></u>	<u><b>2020</b></u>
Balance at beginning of year, including risk margin	\$ <b>1,039,500,000</b>	\$ 947,570,000
Claims incurred related to:		
Current birth year	<b>55,788,432</b>	49,211,856
Prior birth years	<u><b>56,432,250</b></u>	<u>38,801,135</u>
Total claims incurred	<u><b>112,220,682</b></u>	<u>88,012,991</u>
Claims adjusted related to prior birth years	<b>81,999,733</b>	21,692,324
Claims paid related to:		
Prior years	<u><b>(49,782,059)</b></u>	<u>(19,814,852)</u>
Total claims paid	<u><b>(49,782,059)</b></u>	<u>(19,814,852)</u>
Change in unallocated loss adjustment expense	<b>561,644</b>	2,109,537
Change in risk margin reserve	<u>-</u>	<u>(70,000)</u>
Balance at end of year	<u><b>\$ 1,184,500,000</b></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. NICA has denied these allegations. The United States filed a notice advising the court that it is

# Florida Birth Related Neurological Injury Compensation Association

## Notes to Financial Statements

### 7. Commitments and Contingencies (continued)

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 that expired June 30, 2021. On June 21, 2021, NICA entered into a new operating lease for office space, expiring June 30, 2024, with an option to renew for two three-year extensions.

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:

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

## 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 October 28, 2021.

**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.

*Thomas Howell Ferguson P.A.*

Tallahassee, Florida  
October 28, 2021

## Other Financial Information

Florida Birth-Related Neurological Injury Compensation Association

Schedule of General and Administrative Expenses  
Budget to Actual

Year ended June 30, 2021

	<u>Budget</u>	<u>Actual</u>	<b>Variance - Positive (Negative)</b>
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.*