

NOVEMBER 2021

Report of the Florida Birth-Related
Neurological Injury Compensation
Association to the Governor, Legislature,
and Chief Financial Officer



In 1988, in response to steeply increasing medical malpractice insurance premiums, the Florida Legislature created the Florida Birth-Related Neurological Injury Compensation Plan (the Plan) as a no-fault program to cover catastrophic birth-related injuries. The Plan is administered by the Florida Birth-Related Neurological Injury Compensation Association (NICA). The Plan was designed to cover a very narrow range and number of injuries that are significant in terms of cost and system impact as they represent outliers and “uninsurable” injuries.

Awards made through NICA are exclusive. If an injury is covered by NICA, the child and his/her family are not entitled to compensation through lawsuits. The cost of lifetime care for covered children is paid by NICA without assessment of fault and with no cap.

In 2021 the Legislature passed SB 1786 which provided additional benefits to the families, changed the structure of the Board of Directors and requires additional protections and oversight to assure that the children and families served by NICA understand and receive all of the benefits available to them. This report required under Sec. 766.315 enhances the transparency needed by policymakers and families as they monitor and evaluate whether NICA is operating in a manner that meets the standards established under the revised legislation.

SB 1786 specifically requires that on or before November 1, 2021, and by each November 1 thereafter, the association shall submit a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Financial Officer.

The report must include:

- 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.
- 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.
- The average turnaround time for paying or denying compensation for expenses.
- Legislative recommendations to improve the program.
- A summary of any pending or resolved litigation during the year which affects the plan.
- The amount of compensation paid to each association employee or member of the board of directors.

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:

- Reducing the minimum birth weight eligibility for a participant in the plan from 2,500 grams to 2,000 grams.
- 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.
- Increasing the annual special benefit or quality of life benefit from \$500 to \$2,500 per calendar year.

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:

Number of petitions filed 7/1/2020 – 6/30/2021	46
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To calculate the number of claimants awarded compensation and the number of claimants denied compensation, claims for which a final order was issued from 7/1/2020 – 6/30/2021 were reviewed. These claims may have been filed in an earlier year but the final order was issued in the fiscal year ending 6/30/2021.

Number of claimants awarded compensation	15
Number of claimants denied compensation	32

Denied claims were ruled non-compensable by an Administrative Law Judge.

Reason for Denial of Compensation	TOTAL
Below minimum weight requirement	2
Did not occur during labor, delivery or the immediate post-delivery period	8
Did not suffer a permanent and substantial mental and physical impairment	13
No identifiable injury at birth, or substantial mental and physical impairments	1
No Oxygen Deprivation	2
No Oxygen Deprivation/No Permanent or Substantial Mental or Physical Impairment	1
Petitioners Elected Remedy-Declining NICA Benefits	1
Physician non-participating	1
Settlement in Circuit Court	1
Withdrawn by Petitioners	2
TOTAL	32

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:

Paid Compensation for Expenses

Category	Number	\$ Amount
Custodial Day Care	19	24,215.37
Death Benefit	13	290,000.00
Drugs	439	276,079.40
Equipment	182	395,897.18
Health Insurance Premiums	762	238,944.31
Housing	17	278,340.61
Hospitalizations	2	28,290.98
Nursing Care by Other	1,744	2,513,729.54
Nursing Care by Parent	3,216	14,528,726.02
Other	994	34,472.77
Parental Award	313	28,250,279.40
Physician Charges	256	61,264.31
Supplies	2,071	471,224.96
Therapy	1,032	317,592.43
Transportation & Travel	110	70,501.34
Transportation-Insurance	294	184,513.70
Transportation-Maintenance	293	78,905.50
Transportation-Mileage	803	67,504.44
Transportation-Purchase	119	1,026,178.90
	12,834	49,136,661.16

Denied Compensation for Expenses:

Claims Denials

NICA receives many communications from families relative to benefits. For the purposes of reviewing, monitoring and quantifying denials the criteria below are used:

1.

Inquiry – A contact requesting information on a possible benefit or coverage that may be available. Some general information may be included such as asking if a particular item might be covered or if a limitation exists. Most of these will be a question as to whether a type of therapy or piece of equipment or treatment is covered. A response to this kind of question may be included in the report for this year in an abundance of caution. In future reports these will not be included in denials but will be viewed and recorded separately in the system and reported as such.

2.

Request for Payment or Benefit - A request for benefit or payment must be in writing and include sufficient information to identify the item or service, a receipt, estimate or cost comparison, and a Letter of Medical Necessity (LMN). An Explanation of Benefits or a direction to pay either the vendor or the family must also be included. A communication that doesn't include all of the required elements in writing will be considered an inquiry and not included in the Denials section of the Report. Only a complete request for benefit or payment will be evaluated and reported if it is denied.

Category	Type	Reason for Denial	Number	\$ Amount
Drugs	Denial	Not related to birth-related neurological injury	1	30.00
Other	Denial	Exceeded NICA authorized amount.	2	4,152.79
Other	Denial	Initially denied, resolved.	1	120.28
Other	Denial	NICA requested supporting documentation, none received.	1	25.00
Other	Denial	Not a covered expense	1	1,481.94
Other	Denial	Not related to birth-related neurological injury	1	31.25
Other	Inquiry	Inquiry - Initially denied, possibly covered under SB 1786	1	-
Other	Inquiry	Inquiry - Not related to birth-related neurological injury	1	-
Other	Inquiry	Not a covered expense	1	-
Physician Charges	Denial	Not related to birth-related neurological injury	2	345.00
Therapy	Denial	Not related to birth-related neurological injury	1	-

Transportation - Purchase	Denial	Didn't meet requirements for van pursuant to benefit handbook (prior to SB 1786)	1	-
Transportation/Travel	Denial	Exceeded NICA authorized amount.	1	1,679.04
Transportation/Travel	Denial	Not related to birth-related neurological injury	1	477.09
Transportation/Travel	Inquiry	Inquiry - no supporting documentation received.	1	-
Grand Total			17	8,342.39

The average turnaround time for paying or denying compensation for expenses:

Analysis Payment Time for Fiscal Year Ending 2021 by Madison Consulting Group, Inc.

2.5 business days

Legislative recommendations to improve the program.

The major changes made in SB 1786 will have a number of financial and operational impacts. The costs of the new benefits will need to be fully analyzed and their effect on the actuarial soundness of the plan quantified to assure that NICA continues to be actuarially sound into the future. How the implementation of the new benefits works to resolve many of the issues raised by families should also be evaluated before additional changes are made, other than any technical correction that may be needed. NICA recommends no additional legislative changes be made in the 2022 legislative session, and that a full cost/benefit analysis be included with additional recommendations to be included in the report due November 1, 2022.

A summary of any pending or resolved litigation during the year which affects the plan:

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)

NICA is a defendant in a federal 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 allege in the foregoing qui tam action that NICA 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. The United States filed a notice advising the district court that it is not intervening in the case but will continue an investigation into the issues. NICA moved to dismiss the amended complaint on several grounds, including, without limitation (i) the Plan lacks the capacity to be sued, (ii) NICA is immune from suit under the Eleventh Amendment, (iii) NICA is not a third-party under 42 U.S.C. § 1396a(a)(25)(A), and (iv) NICA is not a "person" under the FCA. The district court denied NICA's motion, after which NICA appealed the decision to the United States Court of Appeals for the Eleventh Circuit. The appeal is fully briefed and NICA is awaiting a decision or a notice of oral argument. Meanwhile, the lawsuit is stayed pending resolution of the appeal.

The amount of compensation paid to each association employee or member of the board of directors:

Employee	Total Salary	
Executive Director	177,580.49	
Deputy Director	117,871.78	
Claims Manager	70,438.31	
Provider Relations Coordinator	42,243.64	
Case Manager	40,825.72	*
Case Manager	61,911.49	
Case Manager Supervisor	69,495.95	
Insurance Administrator	54,875.15	
Regulatory Analyst	25,056.29	*
Case Manager	33,498.20	*
Office Operations Manager	60,710.55	
Insurance Administrator	53,481.82	
Accounting Administrator	53,530.40	
Case Manager	66,737.19	
Administrative Assistant	37,128.51	
Case Manager	64,807.98	
Case Manager	56,184.96	

* part time employee

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Summary of Estimated Annual Impact of SB 1786 - Section 5 (8g) Modifications - Relative to Current Revenue and Expense

I. Estimated Current Revenue - 2022 Birth Year (a)	32,000,000
II. Annual 2022 NICA Expense - Other than Direct Claims Expense (b).....	2,700,000
III. Estimated 2022 Birth Year Level Ultimate Losses - After Inflation and Investment Income Offset (Discount) (c).....	59,302,950
IV. Estimated 2022 Amortization of Discount on Present Value Reserves (d).....	54,053,953
V. Indicated Profit / (Loss) Based on Current NICA Coverage Terms - Prior to Offset Related to Investment Results I - II - III - IV.....	(84,056,885)

Indicated Increase in the Annual NICA 2022 Birth Year Expense Shown Above (Item III)

VI. Additional Annual Expense (After Anticipated Inflation and Investment Income) Related to Modifications - 2022 BY Level Modifications Described in Senate Bill 1786 - Section 5 (8g) - Each assumed to Apply Independently

A. Item I - Reduction in BW Eligibility From 2,500 grams to 2,000 grams (e)	25,059,035
B. Item II - Change in Imparement from Medical and Physical to Medical or Physical (e)	51,8000,388
C. Item III - Increases in the Annual Special Benefit from Current \$500 to \$2500 per Calendar Year (e).....	368,992

VII. One Time Addition to Prior Year NICA Loss Reserves - Due to Increase in Benefit in Prior Claimants. Related to Increase in the Annual Special Benefit - Reserves as of June 30, 2021 (f)

7,786,484

Notes:

(a) Based on latest available annual assessment revenue of \$31,799,087 as supplied by NICA. Rounded to \$32.0 Million. **(b)** Based on an average of the actual NICA expenses provided for the latest five years. **(c)** See Exhibit II, Sheet 1, Item 3a. **(d)** Estimate based on application of the 5% investment assumption included in the NICA loss and LAE reserves evaluated as of June 30, 2021. (i.e. 1,081,078,695 X .05 = \$54,053,935). **(e)** See Exhibit I, Sheet 2, Items I, II, and III - B. **(f)** See Exhibit I, Sheet 2, Items III - A