

NOVEMBER 2023

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



SUPPORTIVE SERVICES FOR
FAMILIES & PHYSICIANS

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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 participant and his/her family are not entitled to compensation through lawsuits. The cost of lifetime care for covered participants is paid by NICA without assessment of fault and with no cap.

Section 766.315 (8), Florida Statutes requires that on or before November 1 of each year, 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.

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:

Total number of active NICA participants receiving benefits as of June 30, 2023	240
Number of petitions filed with the Division of Administrative Hearings 7/1/2022-6/30/2023	61

To calculate the number of claimants awarded compensation and the number of claimants denied compensation, claims for which a final order was issued from 7/1/2022-6/30/2023 were reviewed. These claims may have been filed in an earlier year but the final order was issued in the fiscal year ending 6/30/2023. *Denied claims were ruled non-compensable by an Administrative Law Judge.*

Number of claimants awarded compensation	22
Number of claimants denied compensation	39

Reason for Denial of Compensation	TOTAL
Below statutory minimum threshold weight requirement	3
Did not occur during labor, delivery or the immediate post-delivery period	13
Did not suffer a permanent and substantial mental and physical impairment	21
Physician non-participating	1
Birth did not take place in a hospital	1
TOTAL	39

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 of Individual Payments	\$ Amount
Custodial Day Care	40	62,686
Death Benefit	13	480,215
Drugs	623	326,010
Equipment	385	676,676
Family Psychotherapeutic Services	240	125,143
Health Insurance Premiums	947	364,807
Housing	168	2,821,352
Hospitalizations	20	18,535
Nursing Care by Other	2,235	4,553,777
Nursing Care by Parent/Family Care	6,912	40,764,569
Other	967	115,232
Parental Award	221	7,384,706
Physician Charges	274	71,380
Supplies	2,484	689,002
Therapy	1,402	637,545
Transportation & Travel	814	402,605
Transportation-Insurance	340	358,834
Transportation-Maintenance	381	182,355
Transportation-Mileage	1,722	154,556
Transportation-Purchase	277	3,244,321
TOTAL	20,465	63,434,306

Denied Compensation for Expenses

Category	Reason for Denial	Number	\$ Amount
Drugs	Did not meet requirements for reimbursement	1	1,640.58
Equipment	Did not meet requirements for reimbursement	2	11,468.88
Equipment	Not a covered benefit	2	599.99
Family Psychotherapeutic Services	Did not meet requirements for reimbursement	5	10,550.00
Health Insurance Premiums*	Did not meet requirements for reimbursement	1	-
Housing	Did not meet requirements for reimbursement	1	540.09
Housing	Incomplete documentation	1	9,000.00
Nursing Care by Other*	Exceeded authorized amount	9	-
Nursing Care by Parent*	Did not meet requirements for reimbursement	1	-
Other*	Exceeded authorized amount	1	-
Other*	Not a covered benefit	4	-
Supplies	Did not meet requirements for reimbursement	6	530.28
Supplies*	Incomplete documentation	1	-
Therapy*	Did not meet requirements for reimbursement	1	-
Therapy	Not a covered benefit	1	5,270.00
Transportation/Travel*	Did not meet requirements for reimbursement	2	-
Transportation & Travel	Not a covered benefit	4	1,749.98
Transportation-Maintenance	Not a covered benefit	2	3,320.00
Transportation-Mileage*	Did not meet requirements for reimbursement	1	-
Transportation-Purchase	Did not meet requirements for reimbursement	1	47,000.00
Total			91,669.80

*No specific amount requested

The average turnaround time for paying or denying compensation for expenses

= **2.04** BUSINESS DAYS

(See Appendix A for detailed analysis)

Legislative recommendations to improve the program.

As noted in the prior year report, SB 1786 made significant changes in the program including the addition of many new benefits. These changes, along with the requirement that NICA be primary over Medicaid, have increased spending and reserves such that the organization is at risk of not meeting the statutory threshold requirement. If this happens, the program must be suspended and cannot accept new families.

The current statutorily-defined threshold calculation was intended to ensure that the organization remains actuarially sound. However, its assumptions are outdated and actuarial soundness needs to be re-defined in statute.

The implementation of new benefits made available by SB 1786 is memorialized in the current Benefit Handbook which has been approved by the Board of Directors. Many of the new benefits needed clarification in order to be implemented. These benefits are contemplated in the current reserves so would not add cost to the program as it is administered today. However, it would be helpful to ensure that clarifications required to implement the new benefits are reflected in statute.

There are other legislative changes that may be considered in upcoming years. All but the initial one would add cost to the program. These recommendations include:

1. Updating the statute to remove the word “child” and replace with “participant” or “member”
 - 40% of current NICA participants are adults.
2. Considering the inclusion of cost of living adjustments to statutory benefits similar to the 3% COLA for the parental award.
3. Considering the expansion of benefits to address the needs of aging parent caretakers, many of whom have not been in the workforce for dozens of years.
4. Considering changes that could mitigate some of the impact of NICA assuming costs that Medicaid had previously covered.

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

During the fiscal year ending June 30, 2023, NICA entered into a settlement agreement in connection with the federal lawsuit captioned U.S. ex rel. Arven v. The Florida Birth-Related Neurological Injury Compensation Association, et al., No. 0:19-cv-61053 (S.D. Fla.) (“Action”) in which it was alleged that NICA caused the submission of false claims to Medicaid in violation of the FCA by acting as the payor of last resort. The settlement included payments of approximately \$51 million to the United States and \$1.3 million to Relator’s counsel for attorneys’ fees and costs. NICA and its Board acted on advice of counsel, and believe it acted appropriately and in good faith at all times and consistently held the view for more than three decades that it was not a “third party” under 42 U.S.C. § 1396a(a)(25)(A). Accordingly, NICA did not knowingly cause the submission of false claims.

While NICA steadfastly believes it would have prevailed had this dispute gone to trial, it recognized that litigation is inherently unpredictable. In weighing its options, NICA management and its Board consulted with counsel and ultimately decided that it was in the best interest of the program to not only avoid future legal expenses, but also to avoid the risk of losing the lawsuit, which could have resulted in billions of dollars in exposure and been a financially devastating outcome.

The amount of compensation paid to each association employee

Employee	Total Salary (1)	
Deputy Director	129,806.46	
Claims Manager	74,567.74	
Case Manager Supervisor	75,903.58	
Case Manager	69,176.09	
Case Manager	66,401.43	
Case Manager	55,970.10	
Case Manager	37,379.80	(2)
Case Manager	58,500.00	
Case Manager	59,596.11	
Case Manager	55,313.19	
Case Manager	58,500.00	
Case Manager	40,057.50	
Director of Administration	67,898.56	
Director of Financial Operations and Systems	67,817.36	
Insurance Administrator	56,082.90	
Insurance Administrator	55,704.11	
Transportation Coordinator	54,115.49	
Provider Relations Coordinator	43,146.37	
Administrative Assistant	41,756.77	
Regulatory Analyst	23,469.47	(2)
Office Assistant	29,250.00	
Office Assistant	29,250.00	
Office Assistant Temporary	1,503.75	

(1) Fiscal year ending 6/30/2023

(2) Part time employee

The executive director is an independent contractor and not an employee and is not included in this table. The executive director received \$254,608.70 in compensation for the fiscal year ending 6/30/2023. Current monthly contracted amount for the Executive Director excludes all employment taxes and benefits and is comparable to an annual salary of approximately \$197,240.

Pursuant to Florida Statutes, members of the NICA Board of Directors serve without salary.

APPENDIX A



October 31, 2023

NICA
Tim Daughtry, Deputy Director
PO Box 14567
Tallahassee, FL 32317

Re: Analysis Payment Time for Fiscal Year Ending 2023

Dear Mr. Daughtry:

The Florida Neurological Injury Association (NICA) asked Madison Consulting Group (MCG) to assist in designing a random sampling approach to measure the average time for paying claims for fiscal year ending 2023. This report describes that sampling and its results.

INTRODUCTION

SB1786 requires NICA to prepare a report to senior officials in the State on or before November 1, 2021 and annually thereafter. This report is to include the average time for paying or denying claims.

NICA implemented a new system to capture the time for paying claims for all transactions effective April, 2022. This system indicates an average time of 1.97 days for the fiscal year ending 2023.

As this the first entire year that the system has been in place, we also used a sampling approach to estimate the average time for paying claims for the fiscal year. This is the same approach used for fiscal years 2021 and 2022 and requires time intensive review of the circumstances of each sampled transaction. We anticipate that this sampling approach will not be required in the future.

RESULTS

The sampling analysis indicates an average time to pay claim transactions of 2.04 business days with a range of sampling error of ± 0.7 business days for fiscal year ending 2023. This is fairly similar to the results we obtained previously for fiscal year ending 2022 (i.e., 2.4 ± 0.6 business days).

Additionally, the results from the sampling analysis and the new data system are quite consistent and indicate a quick turnaround time.

The sampling results are based on a stratified random sample of 226 transactions from a total of 22,377 transactions for fiscal year ending 2023. Considering the consistency of our sample results with (a) our previous results for fiscal years ending 2021 and 2022, and (b) the data from the new system, we concluded that a larger sample was not required.

AUTHOR

This report was prepared by Choya Everett, ACAS, MAAA under the direction of Mark Crawshaw, Ph.D., FCAS, MAAA. Ms. Everett and Mr. Crawshaw are members of the American Academy of Actuaries and meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

METHODOLOGY

The sampling proceeded as follows:

1. NICA provided MCG with a list of all payment transactions for the fiscal year ending (FYE) 2023. This contained 22,377 records.
2. Several transactions were removed from the analysis.
 - A. NICA provided the following list of categories to be excluded from the sampling:
 - Plaintiff Attorney Fees and Costs,
 - Defense Attorney Fees and Costs,
 - Compensability Exam Fees,
 - FedEx Charges,
 - Medical Records Charges, and
 - Case Management.

- B. MCG removed from consideration all transactions for retroactive benefit payments as identified by the Description field.
- C. MCG removed all transactions involving payments to NICA (i.e., transactions less than \$0).
- 3. After the adjustments above, we were left with 20,032 of the 22,377 transactions with an aggregate payment amount of \$47,639,869.
- 4. MCG assigned a random number between 0 and 1 to each transaction using the random number generator in Excel. Once determined, these numbers were fixed for each transaction.
- 5. Based prior conversations with NICA regarding the complexity of processing payments, MCG stratified the data according to inherent complexity (A = simplest; C = most complex) and amount of the transaction:

Size Group	Amount of The Transaction	
	From	To
1	\$0	\$500
2	500	1,000
3	1,000	2,500
4	2,500	5,000
5	5,000	100,000
6	100,000	250,000
7	Greater than 250,000	

- 6. The scheme above resulted in 14 strata (i.e., A1...A7, C1....C7). However, separate strata were created for parental awards and death benefits, resulting in a total of 16 strata.
- 7. MCG ordered the transactions in each stratum based on the random number in (4) and labeled them as A1-1, A1-2..., A2-1...etc.
- 8. MCG created an initial sample of 294 records of which 228 were researched by NICA and ultimately included in the sample results.
- 9. MCG analyzed the results and identified two outliers for further research by NICA.
- 10. In both cases, the further research in (9) resulted in modification to the initial indication.

11. The results from the initial sample are similar to the results from the prior year analysis. Additionally, results from the enhanced system are in line with the initial sample results. As such, no additional transactions were sampled.
12. The sampling error is computed as twice the standard error.

NOTE ON DEFINING A AND C GROUPS OF PAYMENT TYPES

The various transactions were categorized between A and C as follows:

Custodial Day Care	A
Drugs	A
Equipment	C
Family Care	A
Housing	C
Initial Hospital	C
Nursing Care by Other	A
Nursing Care by Parent	A
Physician Charges	C
Repeat Hospital	C
Supplies	A
Therapy	C
Transportation & Travel	A
Transportation-Insurance	A
Transportation-Maintenance	A
Transportation-Mileage	A
Transportation-Purchase	C
Miscellaneous (Electric Offset, Guardianship, Health Insurance, and Other)	A

Parental Awards and Death Benefits were treated as separate categories.

NOTES ON DEFINING TIME FOR PAYMENT

In the sampling, NICA captured one or more of the following dates for each transaction:

Type	Description
Request	Date NICA was first aware of a request for payment.
Document	Date NICA was presented with supporting documents for the payment
Authorization	Date NICA authorized the request/payment
Invoice	Date on any invoice that was presented to NICA
DOS Start	Date service provided began
DOS End	Date service provided ended
Received	Date an item was received by the beneficiary
Payment	Date payment made

Depending on the availability of the dates and the type of service or product, we computed the time to payment as follows:

Custodial Day Care, Family Care, Nursing – Parent, Nursing -Other, Therapy: We measured the time from later of the request, document, invoice, and DOS end date (whichever of these dates was present); to the payment date. We understand that typically the service provider includes a time sheet as documentation and invoice however payment is not made until service has been provided.

Parental Award: We measured the time from the later of the DOS start and the request date; to the payment date (we understand some parents request their award be paid out periodically rather than as a lump sum).

Repeat Hospital, Supplies: We measured the time from the later of the request, document and invoice dates, to the payment date.

Transportation-Purchase: We measured the time from the earlier of the request, document, or invoice date; to the earlier of the payment, received or approved date. We believe this reasonably captures any processing delays caused by NICA considering the variety of circumstances involved with a vehicle purchase (e.g., reimbursement for an existing purchase, authorization to make a purchase etc.).

Equipment, Housing (Complex): We measured the time from the later of the request and document dates to the earlier of check date and approval date. Our understanding that these types of expense typically involve contractor or vendor delays that are out of NICA’s control once it has approved the purchase.

Physician Charges, Housing (Simple): We measured time from the later of the request and the document date to payment.

In all situations, we were guided by the principle that we should measure delays in processing within NICA’s control. We tried to exclude delays caused by other contractors or vendors.

Choya Everett Digitally signed by Choya Everett
Date: 2023.10.31 17:38:01 -04'00'

Choya Everett, ACAS, MAAA
Madison Consulting Group, Inc.
200 North Second Street
Madison, Georgia 30650
(706) 342-7750
choya.everett@madisoninc.com

Mark Crawshaw Digitally signed by Mark
Crawshaw
Date: 2023.10.31 17:38:31 -04'00'

Mark Crawshaw, Ph.D., FCAS, MAAA
Madison Consulting Group, Inc.
200 North Second Street
Madison, Georgia 30650
(706) 342-7750
mark.crawshaw@madisoninc.com

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P.O. Box 14567

Tallahassee, Florida 32317

Toll-Free 1-800-398-2129

Phone (850) 488-8191

Fax (850) 922-5369

Web NICA.com