

Report No. 2024-037
October 2023

STATE OF FLORIDA AUDITOR GENERAL

Operational Audit

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



Sherrill F. Norman, CPA
Auditor General

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

Section 766.303, Florida Statutes, establishes the Florida Birth-Related Neurological Injury Compensation Plan (Plan) to provide compensation, irrespective of fault, for neurological injury claims related to births occurring on or after January 1, 1989. Section 766.315(1), Florida Statutes, provides for the Plan to be governed by a seven-member Board of Directors appointed by the State's Chief Financial Officer and referred to as the Florida Birth-Related Neurological Injury Compensation Association (NICA). The NICA Board comprises one representative from each of the following groups: participating physicians, hospitals, casualty insurers, physicians other than participating physicians, the general public, parent or legal guardian of an injured infant under the Plan, and advocacy organizations for children with disabilities.

During the period of our audit, Kenney Shipley served as Executive Director of NICA through October 31, 2021, and Melissa Jaacks served as Interim Executive Director of NICA from November 1, 2021, and the following individuals served as Board members:

Representing:

Advocacy Organizations
Participating Physicians
Hospitals
Casualty Insurers
Non-Participating Physicians
Participating Parent or Legal Guardian
General Public

Board Member:

Jim DeBeaugrine, MPA, Chair
Julie Ann Zemaitis DeCesare, M.D.
Narendra Derreddy, M.D.
Vacant
Robert A. London, M.D.
Renee Oliver
Vacant

The team leader was Aaron Franz, CPA, and the audit was supervised by Joshua Barrett, CPA.

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FLORIDA BIRTH-RELATED NEUROLOGICAL INJURY COMPENSATION ASSOCIATION

SUMMARY

This operational audit of the Florida Birth-Related Neurological Injury Compensation Association (NICA) focused on NICA's administration of the Florida Birth-Related Neurological Compensation Plan (Plan), including NICA's compliance with Sections 766.303 through 766.315, Florida Statutes, and applicable State public records and meetings laws. The audit also included an examination of selected NICA administrative activities and follow-up on the findings noted in our report No. 2022-009. Our audit disclosed the following:

Plan Administration

Finding 1: NICA did not timely provide its actuarial consultant the December 2021 and December 2022 quarterly claims cost estimates and, consequently, actuarial threshold and reserve calculations were not timely prepared to evidence whether sufficient funds were available to accept new claims. Additionally, had State law not excluded family residential and custodial care expenses from the reserve calculation for the quarter ended September 30, 2022, NICA would have exceeded the claims threshold by \$95,015,565, preventing NICA from accepting new claims.

Finding 2: NICA's exclusion of the Interim Executive Director's compensation from NICA's November 2022 annual report appeared to frustrate the intent of State law.

Finding 3: Analysis of Plan participant survey responses indicated that, while improvements to participant satisfaction were noted from our prior audit survey, NICA could enhance the *Benefit Handbook* to better specify allowable benefits and better respond to participant complaints.

Information Technology Controls

Finding 4: NICA controls over mobile device text messaging and Apple® device iMessages® and the retention of text and iMessages in accordance with State law and the State records retention schedule need improvement. A similar finding was noted in our report No. 2022-009.

Finding 5: NICA controls for timely disabling user access privileges to the NICA network domain and the Claims Accounting and Reserves Electronic System (CARES) upon an employee's separation from NICA employment need improvement.

Finding 6: As similarly noted in our report No. 2022-009, certain security controls related to network domain, virtual private network, and CARES user authentication need improvement to ensure the confidentiality, integrity, and availability of NICA data and information technology resources.

BACKGROUND

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

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

- Participating physicians.
- Hospitals.
- Casualty insurers.
- Physicians other than participating physicians.
- Parents or legal guardian representatives of injured infants under the Plan.
- Advocacy organizations for children with disabilities.
- The general public.

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

FINDINGS AND RECOMMENDATIONS

PLAN ADMINISTRATION

State law⁴ specifies that an administrative law judge (ALJ) with the Division of Administrative Hearings (DOAH) has exclusive jurisdiction to determine whether a claim filed with NICA is compensable. State law further specifies that no civil action may be brought until a compensability decision has been made by an ALJ. Claims for compensation commence by the claimant filing a petition with DOAH and, if a petition is approved by an ALJ, the claimant becomes a participant in the Plan and entitled to compensation awards for medically necessary and reasonable expenses, including hospital, habilitative and training, drugs, special equipment, facilities, and related travel. Additionally, NICA is to provide Plan participants compensation for the expenses summarized in Table 1.







¹ Section 766.303(1), Florida Statutes.

² Section 766.302(2), Florida Statutes.

³ Section 766.315, Florida Statutes.

⁴ Section 766.304, Florida Statutes.

Table 1
Additional Statutorily Authorized Compensation for NICA Participants

	Payment of an award to the infant’s parents or legal guardians not to exceed \$250,000, adjusted 3 percent annually.
	Housing assistance of up to \$100,000 for the life of the child.
	Payment of a \$50,000 death benefit for an infant in the Plan.
	Reliable transportation for the care of the child, with replacement vans to be purchased by NICA every 7 years or 150,000 miles, whichever occurs first.
	Annual benefit of up to \$10,000 for the immediate family members living with the child for psychotherapeutic services.
	Reasonable expenses incurred in connection with the filing of a claim, including attorney’s fees.

Source: Section 766.31, Florida Statutes.

Compensation is not to be provided for expenses related to items or services that the infant has received or is entitled to receive, or expenses for which the infant has received reimbursement, or for which the infant is contractually entitled to receive reimbursement, from any prepaid health plan, health maintenance organization, or other private insuring entity. In addition, compensation is not to be provided for expenses for items or services that the infant has received, or is entitled to receive, or expenses for which the infant has received reimbursement, or for which the infant is entitled to receive reimbursement, under the laws of any state or the Federal Government, except to the extent such exclusion may be prohibited by Federal law.⁵ According to NICA records, during the period January 2022 through January 2023, 321 participants were reimbursed for claims totaling \$56,920,812.

NICA created a Web-based system, the Claims Accounting and Reserves Electronic System (CARES), to track participant activity, such as ALJ orders, participant contact information, and claims for reimbursement. In addition, NICA utilizes CARES to aggregate participant cost estimates used to produce statutorily required reports.

Finding 1: Claims Estimates and New Claims Threshold Calculation

State law⁶ requires NICA to estimate the present value of the total cost of each claim within 60 days after a claim is filed and to revise such estimates quarterly based upon the actual costs incurred and any additional information that becomes available to NICA since the last estimate. If the total of all current

⁵ Section 766.31(b), Florida Statutes.

⁶ Section 766.314(9), Florida Statutes.

estimates, excluding the award of family residential or custodial care,⁷ exceeds 80 percent of the funds on hand and the funds that will become available to NICA within the next 12 months (threshold calculation), NICA may not accept any new claims without express authority from the Legislature.⁸ Additionally, NICA is to notify the Governor, the Speaker of the House of Representatives, the President of the Senate, the Office of Insurance Regulation, the Agency for Health Care Administration, and the Department of Health within 30 days of the effective date of the new claims suspension.

To determine whether the total of all current estimates do not exceed 80 percent of funds on hand and funds that will become available,⁹ NICA prepares and provides updated quarterly claims cost estimates to an actuarial consultant. To estimate the present value of all filed claims, the actuarial consultant calculates the present value loss and loss adjustment expense (LAE) reserve¹⁰ on filed claims amounts (reserve calculation). The threshold for the suspension of new claims is then determined by comparing 80 percent of total funds on hand and available to the calculated reserve. As NICA had not established a time frame for preparing and submitting quarterly claims cost estimates to the actuarial consultant, we used 30 days from the end of the quarter to provide the actuary sufficient time to make reserve calculations within 3 months of each quarter end.

We inquired of NICA management and reviewed documentation related to NICA's preparation and submission of quarterly claims cost estimates to the actuarial consultant for the period June 2021 through December 2022 to determine whether the estimates were timely prepared and provided to the consultant. We noted that NICA did not provide the actuarial consultant the December 2021 and December 2022 quarterly claims cost estimate data until June 1, 2022, and June 12, 2023, respectively. Consequently, the December 2021 and December 2022 threshold and reserve calculations were not completed until August 2022 and August 2023, respectively. According to NICA management, the December quarterly estimate process is more time-consuming than the other quarterly estimates because all life expectancies are updated and a thorough spending review and analysis is completed. For the December 2021 quarterly estimate, NICA also reviewed participant health records and revised the cost estimate based on NICA's designation as the primary payer instead of Medicaid. For the December 2022 quarterly estimate, NICA also overhauled the process for preparing participant life expectancies.

Our audit also found that, while NICA excluded family residential and custodial care expenses from the reserve calculation in accordance with State law, State law does not appear to provide for family residential and custodial care expenses to not be reimbursed if the new claims threshold is exceeded. Consequently, the basis for excluding such expenses from the reserve calculation is unclear. To assess the potential impact family residential and custodial care expenses would have on NICA's threshold and

⁷ Section 766.302(10), Florida Statutes, defines family residential or custodial care as care normally rendered by trained professional attendants which is beyond the scope of childcare duties, but which is provided by family members. Such care is performed only at the direction and control of a physician when such care is medically necessary, and the award of such care is to be excluded from the present value estimates calculation.

⁸ Section 766.314(9)(c), Florida Statutes, provides that NICA may accept any claim if the injury occurred 18 months or more before the effective date of the new claim's suspension.

⁹ NICA's funds that will become available include assessments against health care providers and insurance companies, transfers from the Office of Insurance Regulation, reinsurance recovery anticipated within 12 months, and income on invested funds.

¹⁰ NICA's reserves represent an estimate of the expected lifetime cost of benefits to all children born through a given point in time. The reserves reflect future inflation and include loss reserves, allocated LAE, and unallocated LAE, discounted to present value.

reserve calculations, we reviewed the actuarial consultant's reserve calculation for the quarter ended September 30, 2022, and noted that, if the calculated \$13,445,458 in acceptable claims had considered the applicable family residential and custodial care loss and LAE of \$108,461,023, NICA would have exceeded the claims threshold by \$95,015,565, preventing NICA from accepting new claims.

The timely completion of quarterly threshold and reserve calculations are essential to provide assurance that NICA has sufficient funds to pay participants and can accept new claims in accordance with State law. Additionally, consideration of all reimbursable NICA expenses in determining the new claims threshold would provide a more accurate view of the funds available for new claims.

Recommendation: We recommend that NICA management ensure that claims cost estimates are provided to the actuarial consultant within 30 days of each quarter end to allow for the completion of threshold and reserve calculations within 3 months of the quarter end. Additionally, we recommend that the Legislature consider the potential impact of family and residential care expenses on NICA's ability to pay future claims and whether the exclusion of such expenses from the threshold and reserves calculations remains appropriate.

Finding 2: Annual Reports

State law¹¹ requires NICA to submit on or before November 1 an annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Financial Officer, as well as publish on or before January 1 each year a report to NICA's Web site. The reports are to include, among other information, the amount of compensation paid to each NICA employee.

As part of our audit, we reviewed the November 2022 NICA annual report for the period July 2021 through June 2022 and the January 2023 report published to NICA's Web site¹² to determine whether NICA prepared the reports in accordance with State law. Our review found that, although NICA reported salary information for the Executive Director who served through October 31, 2021, NICA noted in the November 2022 annual report that information regarding payments made to the Interim Executive Director were not being reported because the Interim Executive Director was an independent contractor and not an employee. For the reporting period July 2021 through June 2022, NICA paid \$160,000 to the Interim Executive Director.¹³

In response to our audit inquiry, NICA management indicated that the Interim Executive Director was an independent contractor and not an employee of NICA, similar to expert witnesses and the NICA Medical Director and Investment Consultant. NICA management further indicated that, applying the plain language of the statute, NICA determined that payment to an independent contractor did not fall within the statutory reporting requirements and disclosed as much in the annual report. NICA management contended, had the Legislature intended all payments to its independent contractors be disclosed, it would have stated as much in the law.

¹¹ Sections 766.315(7)(b) and 766.315(8)(f), Florida Statutes.

¹² The January 2023 Web site report referred to the November 2022 annual report for certain information, such as the amount of compensation paid to NICA employees.

¹³ Pursuant to the agreement between the Interim Executive Director and NICA, effective November 1, 2021, the Interim Executive Director was to receive a \$20,000 monthly fee as payment of salary and benefits.

While we acknowledge the Interim Executive Director's independent contractor status, the Interim Executive Director's agreement specified that she was to perform all such duties which are customarily performed by one holding such positions in other, same, or similar businesses or enterprises as that engaged by NICA to be performed. The agreement further detailed the specific services to be performed, which included, but were not limited to, direction and operation of NICA, organizational review of NICA and its relationship to the families served, its personnel, and its financial position, and other responsibilities as required by the Board of Directors. While it is clear that the Legislature did not intend for independent contractors performing part-time or as-needed work to be included in the annual reporting requirements, it is not clear that the Legislature intended independent contractors performing full-time equivalent responsibilities in NICA's executive leadership to be excluded from annual reporting requirements. It is also clear that the Legislature intended to promote greater transparency and accountability by requiring the reporting of NICA employee compensation and the exclusion of the Executive Director's compensation, based on the nature of the employment arrangement, frustrates that intention.

Recommendation: To further transparency and accountability, we recommend that NICA include in all annual reports information regarding the compensation paid to each NICA employee and all independent contractors performing full-time equivalent responsibilities in NICA's executive leadership.

Finding 3: NICA Plan Participant Survey

To measure the degree of Plan participant satisfaction, in April 2023 we surveyed the 314 individuals listed as contacts for the 236 participants active in the Plan as of March 29, 2023. Survey questions, listed in **EXHIBIT A** to this report, addressed participant satisfaction with the *Benefit Handbook (Handbook)*,¹⁴ explanation of rights and benefits, NICA's handling of questions and complaints, and the benefit dispute resolution process.

As summarized in Table 2, we received survey responses from 98 respondents and our analysis of those responses, as well as comparison to the May 2021 survey responses included in our report No. 2022-009 (summarized in Table 3), indicated that:

- While respondents believed that the *Handbook* was improved, some still noted that the wording was vague in areas related to allowable benefits.
- Respondents' satisfaction with the adequacy of NICA's explanation for the decision to approve or deny participant exception requests increased 18 percent.
- Respondents did not always believe NICA timely and appropriately responded to complaints.

¹⁴ The *Handbook* outlines participant rights, allowable expenses, benefit information, and procedures for filing reimbursement claims and benefit disputes.

Table 2
April 2023 Plan Participant Survey Results

	Dissatisfied		Satisfied		Total Number of Responses ^a
	Number of Responses	Percentage of Responses	Number of Responses	Percentage of Responses	
NICA <i>Handbook</i> was received.	19	21%	73	79%	92
NICA <i>Handbook</i> was adequate to understand rights and authorized benefits.	8	11%	63	89%	71
NICA timely and appropriately responded to Plan participant questions.	16	17%	78	83%	94
NICA's decisions on benefit exception requests were adequately explained.	6	24%	19	76%	25
Participant was satisfied with NICA's response to questions. ^b	17	19%	73	81%	90
NICA timely and appropriately responded to participant complaint. ^c	8	50%	8	50%	16

^a Not all 98 survey respondents provided responses to every question.

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

^c Survey question not included in prior audit survey.

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

Table 3
May 2021 Plan Participant Survey Results

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

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

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

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

Recommendation: We recommend that NICA management continue efforts to provide quality services to participants, including responses to participant complaints and clear information in the *Handbook* regarding participant benefits.

As part of our audit, we evaluated selected NICA information technology (IT) controls, including controls related to mobile devices,¹⁵ user access privileges, and user authentication.

Finding 4: Text and Instant Message Controls

State law¹⁶ requires agencies¹⁷ to maintain public records in accordance with the records retention schedule¹⁸ established by the Department of State, Division of Library and Information Services. The schedule specifies that the retention periods for electronic communications, including text and instant messages, are based on the content, nature, and purpose of the messages. Some of the purposes include administrative correspondence (3 fiscal years), program and policy development correspondence (5 fiscal years), and transitory messages, which are to be maintained until obsolete, superseded, or administrative value is lost.

According to NICA records, as of February 3, 2023, 23 NICA-owned mobile devices, including 3 Apple devices, were approved to conduct NICA business. To evaluate NICA mobile device controls, we inquired of NICA management, reviewed mobile device invoices for the period November 4, 2022, through February 3, 2023, and examined Apple device setting records. Our audit procedures disclosed that, during the period January 2022 through January 2023, NICA had not established policies for the use of mobile devices and text messaging or established a method to capture and retain text messages sent or received by NICA Apple devices. Our examination of all NICA-owned mobile device invoices for the period November 4, 2022, through February 3, 2023, found that 68 text messages were sent or received by one of the NICA Apple devices. Additionally, although iMessaging was to be disabled on the NICA Apple devices, NICA relied on device users to disable the iMessage functionality and had not established a method to capture and retain iMessages should they be sent or received. Subsequent to our audit inquiry, NICA management drafted a mobile device usage and text messaging policy permitting limited use of text messaging by certain personnel. However, the policy did not address (e.g., prohibit or limit) the use of iMessaging on Apple devices.

Effective controls for enforcing prohibitions on text messaging and iMessage use on NICA Apple devices would help ensure that NICA Apple devices are used in accordance with management’s expectations. Absent such controls, or a method to adequately retain text and iMessages, such messages may be sent or received and not be retained in accordance with State law, diminishing transparency and NICA’s ability to provide access to public records. A similar finding was noted in our report No. 2022-009 (Finding 6).

Recommendation: We recommend that NICA management enhance mobile device controls to ensure that text and iMessage use is effectively limited or disabled in accordance with established

¹⁵ Mobile devices are portable devices, such as laptop computers, smartphones, and tablets, that allow storage and transmittal of entity data.

¹⁶ Section 119.021(2)(b), Florida Statutes.

¹⁷ Section 119.011(2), Florida Statutes, defines an agency as any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law.

¹⁸ State of Florida *General Records Schedule GS1-SL for State and Local Government Agencies*.

policy and text and iMessages sent or received are retained in accordance with State law and the records retention schedule.

Finding 5: NICA IT Access Controls

The Center for Internet Security (CIS) *Critical Security Controls* provide that entities should establish and follow a process, preferably automated, for revoking access to enterprise assets, through disabling accounts immediately upon termination, rights revocation, or role change of a user. Similarly, Federal regulations¹⁹ require covered entities such as NICA to implement written policies and procedures for terminating access to electronic protected health information when employment ends. Access termination procedures are established to ensure timely notification to the data security administration function of changes in employee status and cancellation of access privileges to critical areas.

As part of our audit, we inquired of NICA management, evaluated NICA network domain and CARES access privilege controls, and reviewed NICA records for the six employees with network domain and CARES access privileges who separated from NICA employment during the period January 2022 through January 2023 and found that control enhancements were needed to ensure that access privileges are timely disabled. Specifically, we noted that:

- NICA had not established a formal process for disabling network domain and CARES user access privileges prior to employees' separation dates. Instead, according to NICA management, NICA management used e-mails to communicate network domain user access privilege disablement requests to the contracted Network Administrator for handling and either verbally or via e-mail requested the contracted Network Administrator or NICA System Administrator to disable CARES user access privileges. The absence of a formal process may have contributed to the untimely disablement of user access privileges noted on audit.
- Network domain user access privileges for five of the former employees were disabled 9 to 433 days (an average of 160 days) after the employees' separation dates.
- CARES user access privileges for five of the former employees were disabled 4 to 217 days (an average of 58 days) after the employees' separation dates.

According to NICA management, requests to disable user network domain and CARES access privileges were not timely made due to oversight.

The prompt disabling of network domain and CARES access privileges upon an employee's separation from NICA employment reduces the risk that the access privileges may be misused by the former employee or others.

Recommendation: We recommend that NICA management ensure that network domain and CARES access privileges are promptly disabled after a user separates from NICA employment.

Finding 6: Security Controls – User Authentication

Security controls are intended to protect the confidentiality, integrity, and availability of data and IT resources. Our audit procedures disclosed that certain security controls related to network domain, NICA virtual private network (VPN), and CARES user authentication need improvement. We are not

¹⁹ Title 45, Section 164.308, Code of Federal Regulations.

disclosing the specific details of the issues in this report to avoid the possibility of compromising NICA data and related IT resources. However, we have notified appropriate NICA management of the specific issues.

Without appropriate security controls related to network domain, VPN, and CARES user authentication, the risk is increased that the confidentiality, integrity, and availability of NICA data and related IT resources may be compromised. A similar finding related to CARES user authentication was communicated to NICA management in connection with our report No. 2022-009.

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

PRIOR AUDIT FOLLOW-UP

Except as discussed in the preceding paragraphs, NICA had taken corrective actions for the findings included in our report No. 2022-009.

OBJECTIVES, SCOPE, AND METHODOLOGY

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

We conducted this operational audit from March 2023 through June 2023 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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

- Evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering responsibilities in accordance with applicable laws, administrative rules, contracts, grant agreements, and other guidelines.
- Examine internal controls designed and placed into operation to promote and encourage the achievement of management's control objectives in the categories of compliance, economic and efficient operations, the reliability of records and reports, and the safeguarding of assets, and identify weaknesses in those internal controls.
- Determine whether management had corrected, or was in the process of correcting, all deficiencies disclosed in our report No. 2022-009.

- Identify statutory and fiscal changes that may be recommended to the Legislature pursuant to Section 11.45(7)(h), Florida Statutes.

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

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

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

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

In conducting our audit, we:

- Reviewed applicable laws and NICA policies and procedures and interviewed NICA personnel to obtain an understanding of NICA Plan processes and related responsibilities.
- Interviewed NICA management and compared the NICA *Benefit Handbook (Handbook)* to applicable laws to determine whether the *Handbook* was designed in a manner that effectively assisted participants when filing claims for reimbursement, informed participants of their rights, and assisted NICA case managers when reviewing participant claims for reimbursement.
- To measure NICA Plan participant satisfaction, sent surveys to the 314 individuals listed as contacts for the 236 participants active in the Plan as of March 29, 2023. We then combined and analyzed the survey responses from the 98 individuals who returned the survey, including comparing applicable survey responses to the responses received to our May 2021 participant survey.
- From the population of 48 claimant petitions filed with a Division of Administrative Hearings (DOAH) administrative law judge during the period January 2022 through January 2023, examined NICA records for 20 selected claimant petitions to determine whether NICA adhered to the filing time frames established in State law.

- From the population of 12 NICA participant compensation awards executed during the period January 2022 through January 2023, examined NICA records for 8 selected awards to determine whether claims eligibility determinations were made in accordance with State law, participant claims were appropriate and timely paid, and whether the present value of the total costs of the participant claims were timely estimated.
- Interviewed NICA management and inspected NICA records for the present value of total claims costs for the quarters ended September 2021, December 2021, March 2022, June 2022, September 2022, and December 2022 to determine whether NICA updated the present value of total claims costs on a quarterly basis in accordance with State law.
- Compared NICA's estimated present value of the total cost of claims for the quarters ended September 2021, December 2021, June 2022, and September 2022, to the total of all funds on hand for those quarters to determine whether NICA procedures for projecting available funds included only statutorily allowable funds and appropriately assessed whether the total of all funds on hand, and expected to become available within the next 12 months, covered at least 80 percent of NICA's estimated present value of the total cost of claims.
- From the population of 16,124 participant reimbursement claims paid during the period January 2022 through January 2023 and totaling \$56,920,812, examined NICA records for 15 selected participant reimbursement claims totaling \$173,961 to determine whether NICA ensured that payments were made to claimants awarded compensation and that payments were timely, authorized, appropriately supported, and allowable under State law. Additionally, we:
 - Examined NICA records for the 15 selected participant reimbursement claims to determine whether any potential conflicts of interest between NICA personnel or the NICA Board of Directors (Board) and the participant or contracted service and equipment providers requesting reimbursement were properly disclosed.
 - Reviewed NICA correspondence logs for the 15 participants associated with the selected reimbursement claims to determine whether NICA provided accurate information to the participants and did not indicate that statutorily allowable goods or services submitted for reimbursement would be denied.
- Examined NICA records for the 8 survey respondents who indicated that their claims had been denied by NICA and for 11 denied reimbursement claims totaling \$48,064, selected from the population of 31 participant reimbursement claims denied by NICA during the period January 2022 through January 2023 and totaling \$48,180, to determine whether NICA records included adequate support for the denials and evidenced that sufficient justification was provided to the participants in denying the reimbursement requests.
- To determine whether NICA established adequate controls to ensure the timely collection and remittance of assessment fees to the Plan and appropriately charged interest for late or unpaid assessment fees, we:
 - Analyzed data for the \$8,325,000 in fees assessed to 1,847 participating physicians and midwives for the 2023 assessment period.
 - Analyzed data for the \$23,447,250 in fees assessed to 93,759 non-participating physicians for the 2023 assessment period.
 - Analyzed data for the \$10,508,550 in fees assessed to 115 hospitals for the 2022 assessment period and reviewed NICA records for the 12 hospitals that did not timely submit assessment fees to determine whether NICA appropriately calculated and charged interest when assessment fees were not timely received.
- Interviewed NICA management, inspected NICA participant records, and reviewed DOAH case summaries for the 78 NICA cases with orders issued during the period January 2022 through January 2023 to determine whether participants had filed benefit disputes with DOAH and

whether NICA had established processes to track denied claims for reimbursement. Additionally, from the population of 31 claims for reimbursement denied by NICA during the period January 2022 through January 2023, examined NICA records for 10 selected denied claims and one dispute filed with DOAH in March 2023 to determine whether NICA provided the participant, in writing, an explanation for the denial, the participant was provided their dispute rights, and whether the denial was reasonable and properly supported.

- From the population of 1,134 general and administrative expenses, totaling \$10,230,671 and incurred during the period January 2022 through January 2023, examined NICA records for 31 selected expenses, totaling \$652,525, to determine whether NICA general and administrative expenses were adequately supported, clearly necessary to the performance of NICA's statutory duties, and served an apparent public purpose.
- Interviewed NICA management and examined NICA records related to NICA's text and instant message and iMessage retention capabilities to determine whether NICA had established adequate controls to retain text and instant messages and iMessages in accordance with State law.
- Obtained an understanding of NICA network domain, virtual private network, and Claims Accounting and Reserves Electronic System information technology (IT) controls, assessed the risks related to those controls, evaluated whether selected general IT controls were in place, and tested the effectiveness of the selected controls.
- Interviewed NICA management and reviewed NICA Board meeting records for meetings held during the period January 2022 through January 2023 to determine whether Board meetings were publicly held, properly noticed, and promptly recorded in the public record. Additionally, we examined NICA records to determine whether Board members did not have, or properly disclosed, any conflict of interest with entities, Plan participants, or goods or service equipment providers discussed in Board meetings.
- From the population of 226 compensable active and 211 compensable deceased participants in the Plan prior to January 2021, examined NICA records to determine whether the parents or legal guardians for 21 selected active and 39 selected deceased participants were provided retroactive payment for parental awards and death benefits in accordance with Section 766.31, Florida Statutes.
- Reviewed the November 2022 NICA annual report and the January 2023 report published to NICA's Web site to determine whether NICA timely and appropriately prepared the reports in accordance with Section 766.315(7) and (8), Florida Statutes. Additionally, compared certain report information to NICA supporting records to determine whether the reports were accurate and complete.
- Inspected documents and records to determine whether NICA provided sufficient information to each parent and legal guardian regarding compensable expenses in accordance with Section 766.315(6), Florida Statutes.
- Communicated on an interim basis with applicable officials to ensure the timely resolution of issues involving controls and noncompliance.
- Performed various other auditing procedures, including analytical procedures, as necessary, to accomplish the objectives of the audit.
- Prepared and submitted for management response the findings and recommendations that are included in this report and which describe the matters requiring corrective actions. Management's response is included in this report under the heading **MANAGEMENT'S RESPONSE**.

AUTHORITY

Section 11.45, Florida Statutes, requires that the Auditor General conduct an operational audit of the Florida Birth-Related Neurological Injury Compensation Association at least once every three years. Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.

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

Sherrill F. Norman, CPA
Auditor General

EXHIBIT A

PARTICIPANT SURVEY QUESTIONS

NICA Benefit Handbook

1. Did you receive the August 2022 NICA Benefit Handbook and related materials and information to help you understand your rights and what services and equipment were authorized under the Plan?
2. Did you feel that the August 2022 NICA Benefit Handbook and related materials and information adequately explained your rights and what services and equipment were authorized under the Plan?
3. If you did not receive the August 2022 NICA Handbook and related materials or information or felt they were inadequate, please briefly describe the deficiencies and provide suggestions for improvement.

NICA Participant Service

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

Claims Reimbursement

7. If you requested reimbursement for expenses from medical providers and pharmacies during the period of January 2022 through January 2023, did NICA approve your request?
8. If you answered 'No' or 'Sometimes' to question 7, please provide a brief description of the reason(s) NICA provided for denying your request.

Benefit Dispute

9. If you requested, by letter, that a benefit be reviewed by the Executive Director as an exception, was the Executive Director's decision adequately explained and satisfactory?
10. If you answered 'No' to question 9, please describe what was lacking from the explanation and the reason(s) for your lack of satisfaction.

Complaints

11. If you filed a complaint with NICA during the period January 2022 through January 2023, did you feel that NICA timely and appropriately responded to your complaint?
12. If you answered 'Yes' or 'No' to question 11, please rate your satisfaction with NICA's response to your complaint.
13. If you answered question 12 as less than satisfactory, please provide details describing the reason(s) for your lack of satisfaction.

MANAGEMENT'S RESPONSE



October 17, 2023

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

Dear Ms. Norman:

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

We appreciate the courtesy extended by the staff of the Auditor General's Office as well as the auditors who performed the testing during the course of the audit. We also appreciate the acknowledgement that corrective action has been taken for almost all of the findings in the previous report. As discussed at length with the audit team, the past two years have been very busy for our organization – we have implemented many changes. We are proud of the work that we have done but acknowledge that there is always room for improvement.

Finding 1:

NICA did not timely provide its actuarial consultant the December 2021 and December 2022 quarterly claims cost estimates and, consequently, actuarial threshold and reserve calculations were not timely prepared to evidence whether sufficient funds were available to accept new claims. Additionally, had State law not excluded family residential and custodial care expenses from the reserve calculation for the quarter ended September 30, 2022, NICA would have exceeded the claims threshold by \$95,015,565, preventing NICA from accepting new claims.

Response: We concur. As noted, NICA has undergone significant change in the past two years. For the December 31, 2021, and December 31, 2022, reserve calculations, significant adjustments were made to improve the accuracy of the reserve calculation (as noted in your report). This resulted in a delay in getting information to our actuaries. During the August 2023 Board of Directors meeting, all outstanding reserves were available and accepted by the Board of Directors (through June 30, 2023). Additionally, the data for the September 30, 2023, reserve calculations was sent to the actuaries on October 16, 2023, and should be completed by the end of November. We have committed to our Board of Directors that reserve and threshold calculations will be completed no later than mid-April for the December 31 reserves and two months after the end of the quarter for the remaining quarterly reserves. Since that time, we have

streamlined our process even more such that December 31 reserves should be completed no later than March 31st.

We agree that the statutorily-required deduction of family care from the threshold calculation creates a product that may not adequately reflect the financial condition of the organization. In fact, there are several aspects of the current threshold calculation that need updating. We will be proposing potential changes to the threshold calculation for the upcoming legislative session.

Finding 2:

NICA's exclusion of the Interim Executive Director's compensation from NICA's November 2022 annual report appeared to frustrate the intent of State law.

Response: As noted in your report, it is not clear that the Legislature intended independent contractors performing full-time equivalent responsibilities in NICA's executive leadership to be excluded from annual reporting requirements. Due to the lack of clarity, we relied on the language in the law which clearly requires disclosure for "employees". It was not NICA's intent to "frustrate" the intent of the law which is why we included the disclosure on the annual report that the Interim Executive Director was not an employee, thus, not included. Note that at the time, the contracted Executive Director was Interim and there was a salary reported for the former Executive Director. With the permanent appointment of the current Executive Director, we agree that there should be some sort of disclosure related to compensation to ensure complete transparency.

Finding 3:

Analysis of Plan participant survey responses indicated that, while improvements to participant satisfaction were noted from our prior audit survey, NICA could enhance the *Benefit Handbook* to better specify allowable benefits and better respond to participant complaints.

Response: We are pleased with the increased satisfaction regarding the adequacy of the Handbook (from 59% to 89%) and decisions on benefits (from 58% to 76%) – these have been areas of intense focus for us. However, as noted, there continues to be room for improvement.

Finding 4:

NICA controls over mobile device text messaging and Apple® device iMessages® and the retention of text and iMessages in accordance with State law and the State records retention schedule need improvement. A similar finding was noted in our report No. 2022-009.

Response: NICA has implemented many information technology controls in the past two years and continues to do so. These improvements cannot be made all at once, thus, must be prioritized. Because there were only three Apple devices, a thorough review of controls over these devices was not prioritized. We have amended our policy to adequately address the retention of messages on mobile devices.

Finding 5:

NICA controls for timely disabling user access privileges to the NICA network domain and the Claims Accounting and Reserves Electronic System (CARES) upon an employee's separation from NICA employment need improvement.

Response: We concur and have implemented procedures to ensure timely revocation of access upon termination of employment.

Finding 6:

As similarly noted in our report No. 2022-009, certain security controls related to network domain, virtual private network, and CARES user authentication need improvement to ensure the confidentiality, integrity, and availability of NICA data and information technology resources.

Response: Information technology controls have been a priority during the past two years and many improvements have been made. However, this is an area that requires ongoing vigilance and updating due to the constantly changing environment. We are working with our technology team to determine how best to implement the improvements recommended.

Sincerely,



Melissa Jaacks, CPA
Executive Director