

**STATE OF FLORIDA AUDITOR GENERAL**

**Operational Audit**

Report No. 2022-009  
August 2021

**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. During the period of our audit, Section 766.315(1)(a), Florida Statutes, provided for the Plan to be governed by a five-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, and the general public.

During the period of our audit, Kenney Shipley served as the Executive Director of NICA and the following individuals served as Board members:

<b>Representing:</b>	<b>Board Member:</b>
General Public	Charles Lydecker, Chair
Participating Physicians	Steven Dukes, M.D.
Hospitals	Bryan Anderson
Casualty Insurers	Robert E. White, Jr.
Non-Participating Physicians	Samuel Wolf, D.O., from October 9, 2020 Marcos Lorenzo, M.D., through October 8, 2020

The team leader was Christi Alexander, CPA, and the audit was supervised by Joshua Barrett, CPA.

Please address inquiries regarding this report to Joshua Barrett, CPA, Audit Manager, by e-mail at [joshuabarrett@aud.state.fl.us](mailto:joshuabarrett@aud.state.fl.us) or by telephone at (850) 412-2804.

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# FLORIDA BIRTH-RELATED NEUROLOGICAL INJURY COMPENSATION ASSOCIATION

## **SUMMARY**

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This operational audit of the Florida Birth-Related Neurological 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. Our audit disclosed the following:

### **Plan Administration**

**Finding 1:** NICA had not established a mechanism to effectively and consistently document, account for, and track benefit denials or disputes.

**Finding 2:** Analysis of Plan participant survey responses indicated that the NICA *Benefit Handbook* could be enhanced to better inform participants of their benefits and rights and that NICA could take steps to ensure that benefit request decisions are documented and adequately explained to participants.

**Finding 3:** NICA records did not always include the rationale for denying or limiting participant claim reimbursements.

### **NICA Assessments**

**Finding 4:** NICA did not timely or consistently use all available remedies to collect delinquent assessment amounts from non-participating physicians. As of June 16, 2021, active non-participating physicians owed NICA \$14,367,193 for assessment amounts due for the 2016 through 2021 assessment years.

### **Selected Administrative Activities**

**Finding 5:** NICA expenses associated with holiday luncheons for NICA personnel did not appear to be clearly necessary to the performance of NICA's statutory duties. Additionally, meals provided for NICA personnel and Board members were not limited to the amounts provided by State law.

**Finding 6:** NICA controls did not promote the retention of text and instant messages in accordance with State public records laws.

### **Information Technology Controls**

**Finding 7:** Certain security controls related to user authentication for the network domain, NICA virtual private network (VPN), and Claims Accounting and Reserves Electronic System need improvement to ensure the confidentiality, integrity, and availability of NICA data and information technology resources.

## **BACKGROUND**

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State law<sup>1</sup> 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 law<sup>2</sup> 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 was governed by a five-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:<sup>3</sup>

- Participating physicians.
- Hospitals.
- Casualty insurers.
- Physicians other than participating physicians.
- The general public.

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

## **FINDINGS AND RECOMMENDATIONS**

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### **PLAN ADMINISTRATION**

State law<sup>4</sup> 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. However, 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

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<sup>1</sup> Section 766.303(1), Florida Statutes.

<sup>2</sup> Section 766.302(2), Florida Statutes.

<sup>3</sup> Section 766.315, Florida Statutes. Pursuant to Chapter 2021-134, Laws of Florida, effective June 21, 2021, the number of Board members was increased to seven by adding a parent or legal guardian of a Plan participant and a representative of an advocacy organization for children with disabilities. A listing of 2021 statutory changes impacting NICA are included as **EXHIBIT A** to this report.

<sup>4</sup> Section 766.304, Florida Statutes.

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.<sup>5</sup>

Compensation also includes periodic payments of an award to the infant's parents or legal guardians not to exceed \$100,000, a \$10,000 death benefit, and reasonable expenses incurred in connection with the filing of a claim, including attorney's fees.<sup>6</sup> According to NICA records, during the period July 2019 through April 2021, 435 participants were reimbursed for claims totaling \$38,555,837.

## **Finding 1: Benefit Denial and Dispute Records**

NICA's responsibilities include administering the Plan and the payment of claims on behalf of the Plan. Once a claimant becomes a participant in the Plan, a case manager is assigned to analyze benefit requests and to determine whether a request fits the medical profile and statutory requirements. Case managers are responsible for ensuring that Plan participants timely receive a *Benefit Handbook (Handbook)* that outlines participant rights, allowable expenses, benefit information, and procedures for filing reimbursement claims and benefit disputes.

Once a claim is determined to be compensable by an ALJ, NICA communicates with the parents or legal guardians of the participant to determine the medically necessary and reasonable needs of the participant and family. The *Handbook* includes a listing of benefits and procedures established to carry out NICA's statutory duties and specifies that NICA pays benefits under the Plan based on an evaluation of each participant and their needs. The *Handbook* further specifies that, if a parent or legal guardian feels that a benefit not described in the *Handbook* would be of advantage to the participant, the parent or legal guardian may request, by letter, that the benefit be reviewed by the Executive Director of NICA as an exception. The *Handbook* also provides that, when a Case Manager Supervisor cannot resolve a benefits dispute, the Executive Director is to attempt to resolve the dispute with the parent or legal guardian. The *NICA Claims Manual (Claims Manual)* for case managers provides that participants should be made aware of alternative methods of dispute resolution other than through legal channels so that the participants will come to their case manager before taking legal action on a claim.

NICA created the Claims Accounting and Reserves Electronic System (CARES), a Web-based system, to track participant activity, such as ALJ orders, participant contact information, and claims for reimbursement. As part of our audit, we interviewed NICA management and examined NICA records to determine whether NICA had established effective controls over claims processing, including approvals, denials, and benefit disputes. Our audit procedures found that, while NICA had established procedures for benefit denials and disputes, NICA had not established a mechanism within CARES to effectively and consistently document, account for, and track benefit denials or disputes from initial claims request to

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<sup>5</sup> Section 766.31(1)(a), Florida Statutes.

<sup>6</sup> Section 766.31(1)(b) and (c), Florida Statutes. Pursuant to Chapter 2021-134, Laws of Florida, beginning January 1, 2021, periodic payments of an award may not exceed \$250,000 and parents and guardians who received an award prior to January 1, 2021, and whose child currently receives benefits are to receive a retroactive payment sufficient to bring the total award paid to \$250,000. Chapter 2021-134, Laws of Florida, also increased the death benefit to \$50,000. A listing of 2021 statutory changes impacting NICA are included as **EXHIBIT A** to this report.

resolution. Specifically, we noted that, as of May 18, 2021, CARES accounted for and tracked approved and paid claims through a combination of the paid check or Automated Clearing House number assigned to a participant's claim number. However, NICA had not established unique identifiers to account for and track denied or disputed claims.

According to NICA management, the case manager was to log requests into CARES, and include in the Activity Log, correspondence and supporting records related to potential denials or benefit disputes. NICA management further indicated that NICA does not provide participants formal denials of benefit requests. Instead, according to NICA, the CARES Activity Log may show that participants did not provide sufficient information or did not respond to requests for additional information that would facilitate the processing of a request or that NICA found acceptable alternatives for the participants.

Notwithstanding management's response, given the limitations of CARES, these outcomes were not always readily apparent. Additionally, with NICA's reliance on alternative dispute and benefit resolution methods, including those involving the Executive Director, it is important that NICA establish a mechanism to document, account for, and track the handling of all claims from initial request to resolution to evidence that claims are appropriately considered and adjudicated in accordance with State law and NICA procedures. According to NICA management, NICA was in the process of determining how to capture information that would allow NICA to effectively track the outcome of all claims for reimbursement, from initial request to resolution.

**Recommendation: We recommend that NICA management enhance processes and controls to ensure that each participant claim for reimbursement is documented, accounted for, and tracked from initial request to resolution.**

## **Finding 2: NICA Plan Participant Survey**

To measure the degree of Plan participant satisfaction, in May 2021 we surveyed the 279 individuals listed as contacts for the 221 participants active in the Plan as of April 30, 2021. Survey questions, listed in **EXHIBIT B** to this report, addressed participant satisfaction with the *Handbook*, explanation of benefits, NICA's handling of questions, and the dispute resolution process.

We received survey responses from 120 respondents and the survey responses, as summarized in Table 1, indicated that most of the respondents received the *Handbook* and were satisfied with NICA's responses to participant questions. However, 41 percent of the respondents expressed dissatisfaction with the explanation of benefits and participant rights provided in the *Handbook* and 42 percent expressed dissatisfaction with the adequacy of NICA's explanation for the decision to approve or deny participant exception requests. Some respondents indicated that many covered items were not listed in the *Handbook* and that participants were not always made aware of what benefits to request. Additionally, respondents indicated that NICA did not always clearly explain, either verbally or in writing, why a benefit request was denied.

**Table 1  
Plan Participant Survey Results**

	Dissatisfied		Satisfied		Total Number of Responses <sup>a</sup>
	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 written exception requests were adequately explained.	18	42%	25	58%	43
Participant was satisfied with NICA's response to questions. <sup>b</sup>	26	26%	74	74%	100

<sup>a</sup> Not all 120 survey respondents provided responses to every question.

<sup>b</sup> 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 evaluate the NICA *Handbook* to ensure that participants are adequately informed of their benefits and rights and take steps to ensure that NICA participant benefit request decisions are documented and adequately explained to participants.

### Finding 3: Claims Reimbursement

For each reimbursement request, the case manager is to determine and document medical necessity, its relationship to the injury, and rule out other payment sources. In addition to the *Handbook*, the *Claims Manual* provided guidance to case managers when reviewing and approving or denying participant requests for reimbursement.

As part of our audit, we reviewed the *Handbook* and *Claims Manual* for consistency and alignment with statutorily allowable costs. Additionally, we examined NICA records, including the CARES Activity Logs, for 25 participant claim reimbursements, totaling \$150,251, paid during the period July 2019 through April 2021, to determine whether NICA appropriately documented approved and denied requests for reimbursement. We noted that:

- State law<sup>7</sup> specifies that a telehealth provider<sup>8</sup> has the duty to practice in a manner consistent with their scope of practice and the prevailing professional standard of practice for a health care professional who provides in-person health care services to a patient in the State. Effective March 20, 2020, the Agency for Healthcare Administration (AHCA) issued an alert expanding the use of telemedicine during the COVID-19 pandemic for Florida Medicaid. NICA received a copy of the AHCA alert on March 24, 2020. However, our examination of the CARES Activity Logs and participant records found that, on March 24, 2020, and March 26, 2020, NICA denied two participant requests for reimbursement of physical therapy telehealth services. In both

<sup>7</sup> Section 456.47(2)(a), Florida Statutes.

<sup>8</sup> Section 456.47(1)(b), Florida Statutes, defines a telehealth provider as any individual who provides health care and related services using telehealth and who is licensed or certified pursuant to State law.



instances, NICA records did not evidence how the expenses were not medically necessary and reasonable or that NICA had requested from the participants letters of medical necessity for the telehealth services. We also noted that a subsequent request for telehealth services from one of the two participants in November 2020 was approved.

In response to our audit inquiry, NICA management indicated that, at the time of the March 2020 requests, NICA had not established guidelines for the reimbursement of physical or occupational therapy telehealth services. Absent a letter of medical necessity from the service provider indicating that telehealth was to be used, it was difficult for NICA to determine how the physical evaluation and participant movements could be accomplished by telehealth. On November 18, 2020, NICA management informed case managers that NICA was going to cover physical and occupational therapy telehealth services. In response to our audit inquiry, NICA management indicated that they were not aware of any out-of-pocket expenses incurred by participants for these services.

- NICA records did not evidence the rationale for limiting a reimbursement request for a computer used as augmentative communication technology to \$1,000, instead of the total \$1,314 cost incurred by the participant. According to NICA management, NICA reimbursed the claim using guidelines included in draft revisions to the *Handbook* that detail reimbursement limitations for computers without any adaptive programs or attachments.

Absent records evidencing the basis for denying or limiting a participant reimbursement request and the *Handbook* reflecting current policy, NICA cannot adequately demonstrate that the Plan is being equitably administered in accordance with State law.

**Recommendation:** We recommend that NICA management ensure that the *Handbook* details all limitations on allowable reimbursement amounts and such limitations are appropriately communicated to participants. Additionally, we recommend that NICA management document the decision rationale each time a request for reimbursement is denied or limited.

## NICA ASSESSMENTS

State law<sup>9</sup> authorizes NICA to collect annual assessments from physicians, certified nurse midwives, and hospitals to finance the Plan. During the period July 2019 through April 2021, the assessment per physician licensed in the State under Chapter 458 or 459, Florida Statutes, was \$250. Physicians electing to participate in NICA were assessed \$5,000, certified nurse midwives working under the supervision of a certified physician were assessed \$2,500, and each hospital<sup>10</sup> licensed under Chapter 395, Florida Statutes, was assessed \$50 per live infant delivered<sup>11</sup> at the hospital during the prior calendar year. According to NICA's audited financial statements, during the period July 2018 through June 2020, NICA collected assessments totaling \$54,755,762.

<sup>9</sup> Section 766.314, Florida Statutes.

<sup>10</sup> Section 766.314(4)(a), Florida Statutes, excludes hospitals owned or operated by the State or county, special taxing district, or other political subdivision of the State from assessment requirements.

<sup>11</sup> Section 766.314(4)(a), Florida Statutes, specifies that hospitals may exclude any infant born to a charity patient or born to a patient for whom the hospital receives Medicaid reimbursement, if the sum of the annual charges for charity patients plus annual Medicaid contractuals of the hospital exceeds 10 percent of the total annual gross operating revenues of the hospital.



## Finding 4: Delinquent Assessments

State law<sup>12</sup> specifies that NICA may file suit to enforce the collection of required assessments and is entitled to attorney's fees, costs, and interest paid upon the entry of judgment against a physician for failure to pay. As part of the assessment process, NICA receives a listing of licensed physicians and hospitals from the Department of Health and AHCA, respectively. NICA sends billing statements to hospitals<sup>13</sup> and non-participating physicians<sup>14</sup> each October with the notification that, if payment is not received by January 1, NICA will charge interest at the statutorily authorized rate.<sup>15</sup> NICA's assessment on non-participating physicians is considered a tax<sup>16</sup> subject to the 5-year statute of limitation to take action to collect any tax.<sup>17</sup>

To evaluate whether NICA had established effective controls to ensure the timely collection of statutorily authorized assessments, we interviewed NICA management, analyzed NICA billing and payment records for hospitals and non-participating physicians, and examined NICA records for 40 non-participating physicians with assessment amounts due by January 1, 2020 and 2021, and 40 hospitals with assessment amounts due by January 1, 2021. Our audit procedures found that while NICA included interest charges on the billing statements of non-participating physicians with delinquent assessment amounts, NICA did not consistently take additional actions, such as sending demand collection letters or filing suit in county court, to ensure the collection of delinquent assessment amounts. According to NICA management, NICA had not sent demand collection letters since September 2017 and last filed suit in county court in January 2018 due to the substantial time and cost associated with the collection process and that NICA typically filed suit in batches covering multiple years to defray such costs. As shown in Table 2, our analysis of assessment data for active non-participating physicians disclosed that, as of June 16, 2021, the physicians' delinquent assessment amounts for the 2016 through 2021 assessment years totaled \$14,367,193, representing approximately 13 percent of the total assessment amount for those years.

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<sup>12</sup> Section 766.314(6)(b), Florida Statutes.

<sup>13</sup> Hospital billing statements are provided for the prior year based on hospital live birth records.

<sup>14</sup> Non-participating physician billing statements are for the upcoming assessment year. For example, the October 2020 billing statement was for the 2021 assessment year.

<sup>15</sup> Section 55.03, Florida Statutes, provides for the Chief Financial Officer to set the applicable rate of interest.

<sup>16</sup> James F. Coy, M.D. v. Florida Birth-Related Neurological Injury Compensation Plan, 595 So.2d 943, Supreme Court of Florida.

<sup>17</sup> Section 95.091(1)(a), Florida Statutes.

**Table 2**  
**Analysis of Active Non-Participating Physician Assessments Paid and Delinquent**  
**For the 2016 Through 2021 Assessment Years**  
**As of June 16, 2021**

Assessment Year	Assessments Paid <sup>a</sup>		Delinquent Assessments		Total Assessment Amount	Delinquent Assessments as Percentage of Total Assessment Amount
	Amount	Number of Physicians	Amount	Number of Physicians		
2021	\$13,791,926	56,362	\$ 4,836,553	19,242	\$ 18,628,479	26%
2020	16,035,537	64,372	3,118,420	12,043	19,153,957	16%
2019	16,209,715	65,209	2,291,303	8,336	18,501,018	12%
2018	16,132,917	64,487	1,765,173	6,123	17,898,090	10%
2017	16,159,869	64,043	1,356,025	4,506	17,515,894	8%
2016	14,486,458	58,316	999,719	3,215	15,486,177	6%
<b>Totals</b>	<b><u>\$92,816,422</u></b>	<b><u>372,789</u></b>	<b><u>\$14,367,193</u></b>	<b><u>53,465</u></b>	<b><u>\$107,183,615</u></b>	<b><u>13%</u></b>

<sup>a</sup> Includes late payments and pre-payment amounts applicable to the assessment year.

Source: NICA records.

To ensure that all statutorily authorized assessment amounts due to NICA to support the Plan are collected, it is critical that NICA consistently and timely use all available remedies to collect delinquent amounts.

**Recommendation: We recommend that NICA management timely and consistently use all available remedies to collect delinquent assessment amounts.**

**Follow-Up to Management’s Response**

*NICA management indicated in their written response that they disagreed with the \$14.4 million total cited in the finding as the amount of outstanding non-participating physician assessments for the 2016 through 2021 assessment years. Instead, NICA management estimated the total for non-exempt, outstanding assessments to be closer to \$8.4 million. However, as indicated in management’s response, management based their figure on an estimate of physicians exempt from the statutory assessment. At the time of our audit, documentation identifying the physicians who were exempt from paying the assessment was not available. Consequently, the finding and recommendation stand as presented.*

**SELECTED ADMINISTRATIVE ACTIVITIES**

As part of our audit, we evaluated selected NICA administrative activities and controls, including those related to general and administrative expenses and mobile devices.<sup>18</sup>

<sup>18</sup> Mobile devices are portable devices, such as laptop computers, smartphones, and tablets, that allow storage and transmittal of entity data.

## Finding 5: NICA Expenses

State law<sup>19</sup> specifies that funds collected by NICA and any income therefrom are to be disbursed only for the payment of awards for compensation and for the reasonable expenses of administering the Plan. State law<sup>20</sup> authorizes travel paid by a public agency<sup>21</sup> to be reimbursed at a rate of \$80 per travel day (\$20 per quarter of the travel day), or if actual expenses exceed \$80 per day, the actual expenses for lodging plus \$6, \$11, and \$19 for breakfast, lunch, and dinner, respectively. State law<sup>22</sup> provides that Board members are to be reimbursed at the statutorily authorized reimbursement rates for actual and necessary expenses incurred in the performance of their official duties as a Board member of the Plan.

To determine whether NICA expenses served an authorized public purpose and were clearly necessary to the performance of NICA's statutory duties, we interviewed NICA management, reviewed the *NICA Personnel Policies and Procedures Manual (Procedures Manual)*, and examined NICA records for 97 general and administrative expense transactions totaling \$705,150 and incurred during the period July 2019 through April 2021. Our audit procedures found that:

- NICA hosted two holiday luncheons for NICA personnel in December 2019 and December 2020 with expenses totaling \$363 and \$421, respectively, that did not appear to be clearly necessary to the performance of NICA's statutory duties. Additionally, due to NICA's limited chart of accounts for general and administrative expenses, these expenses were recorded as travel. According to NICA management, these luncheons benefited the morale of NICA employees.
- While in travel status, NICA Board members and personnel were provided meals that exceeded the allowances authorized by State law. Specifically, we found that:
  - NICA expended \$1,145 on a breakfast buffet and \$746 on all day non-alcoholic beverage passes for four Board members, two NICA personnel, and six others (\$158 per person) who attended the August 26, 2019, Board meeting.
  - NICA expended \$732 on a lunch buffet and \$386 on all day non-alcoholic beverage passes for four Medical Advisory Committee<sup>23</sup> members and three NICA personnel (\$160 per person) who attended the September 28, 2019, NICA Medical Advisory Committee meeting. Additionally, due to NICA's limited chart of accounts, NICA recorded the meals as outreach.
  - NICA expended \$599 on a breakfast buffet and \$399 on all day non-alcoholic beverage passes for three Board members, two NICA personnel, and seven others (\$83 per person) who attended the December 13, 2019, Board meeting.
  - Contrary to State law, the *Procedures Manual* permitted NICA personnel to be reimbursed or to charge a NICA-issued credit card at the State reimbursement rate, or the reasonable actual work-related cost, for pre-approved travel. The *Procedures Manual* stated that, without a receipt, meals would be paid at a rate of \$6, \$11, and \$19 for breakfast, lunch, and dinner, respectively. Consequently, our examination noted that 13 NICA personnel meal expenses,

<sup>19</sup> Section 766.314(3), Florida Statutes.

<sup>20</sup> Section 112.061(6), Florida Statutes.

<sup>21</sup> Section 112.061(2)(a), Florida Statutes, defines an agency or public agency as any office, department, agency, division, subdivision, political subdivision, board, bureau, commission, authority, district, public body, body politic, county, city, town, village, municipality, or any other separate unit of government created pursuant to law.

<sup>22</sup> Section 766.315(3), Florida Statutes.

<sup>23</sup> NICA created the Medical Advisory Committee to provide recommendations regarding medical evaluations and procedures utilized to evaluate claimants for inclusion in the Plan and to provide recommendations for treatment policies for participants with complex medical issues.

totaling \$1,046, exceeded statutorily authorized reimbursement rates. For example, two NICA personnel charged \$82 (\$41 per person) to a NICA-issued credit card for dinner the evening before the September 28, 2019, Medical Advisory Committee meeting.

According to NICA management, due to the number of attendees (e.g., Board and Medical Advisory Committee members, NICA personnel, investment consultants, actuaries, auditors), NICA contracted in advance with the hotel to have a buffet set up in the meeting room to allow the meetings to continue without breaking for meals. Further, NICA management indicated that NICA personnel, Board and Committee members, and other attendees were not reimbursed for meals when food was provided as part of the meeting. Notwithstanding, the average cost per person exceeded the meal allowances authorized by State law.

As stewards of funds intended to provide compensation for birth-related neurological injuries that result in significant medical and other costs, NICA management is responsible for ensuring that expenses are authorized by and in accordance with applicable law, reasonable in the circumstances and necessary to accomplish the authorized purpose of NICA and Board, and in pursuit of public, rather than a private, purpose.

**Recommendation: We recommend that NICA management:**

- **Ensure that the totality and nature of general and administrative expenses are clearly necessary to the performance of NICA’s administration of the Plan and that the NICA chart of accounts promotes the appropriate recording of expenses.**
- **Limit expenses for Board and Medical Advisory Committee meetings to those clearly necessary to discharge Board and Committee duties and to the amounts authorized by State law.**
- **Update the *Procedures Manual* to require that reimbursable meal expenses and meals charged to a NICA-issued credit card not exceed statutorily authorized reimbursement rates.**

**Finding 6: Retention of Text and Instant Messages**

State law<sup>24</sup> requires agencies<sup>25</sup> to maintain public records in accordance with the records retention schedule<sup>26</sup> 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 (until obsolete, superseded, or administrative value is lost). According to NICA records, as of May 3, 2021, 19 NICA-owned mobile devices, including 2 Apple devices, were approved to conduct NICA business and had text and instant messaging capabilities.

To evaluate NICA’s administration of mobile devices, we interviewed NICA management and inspected records for the 19 NICA-owned mobile devices. We noted that NICA had not disabled text messaging nor established a method to capture and retain text messages sent or received by the 19 NICA-owned

<sup>24</sup> Section 119.021(2)(b), Florida Statutes.

<sup>25</sup> 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.

<sup>26</sup> State of Florida *General Records Schedule GS1-SL for State and Local Government Agencies*.

mobile devices. Our examination of all NICA mobile device invoices for the period July 4, 2019, through May 3, 2021, found that 1,101 text messages were sent or received by 16 of the NICA-owned mobile devices. Additionally, we noted that NICA had not disabled instant messaging (iMessages) on the two NICA Apple devices nor established a method to capture and retain iMessages sent or received by these devices. According to NICA management, 17 of the mobile devices were provided to personnel to enable remote work during the COVID-19 pandemic and that NICA was researching methods to ensure that all text and instant messages are captured and retained in accordance with State law. Additionally, NICA management indicated that, as of June 11, 2021, iMessages had been disabled on the two Apple devices.

Absent a method to adequately retain text and instant messages, 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.

**Recommendation:** We recommend that NICA management enhance mobile device controls to ensure that all text and instant messages sent or received by NICA-owned mobile devices are retained in accordance with State law.

## INFORMATION TECHNOLOGY CONTROLS

As part of our audit, we evaluated selected NICA information technology (IT) controls, including controls related to user authentication.

### Finding 7: 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 user authentication for the network domain, NICA VPN, and CARES need improvement. We are not 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 user authentication for the network domain, NICA VPN, and CARES, the risk is increased that the confidentiality, integrity, and availability of NICA data and related IT resources may be compromised.

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

## RELATED INFORMATION

As part of our audit, we interviewed NICA management and NICA's general counsel regarding potential litigation. In response to our audit inquiries, NICA provided the pleadings and orders for *Arven v. the Florida Birth-Related Neurological Injury Compensation Association and Florida Birth-Related Neurological Injury Compensation Plan*, Case No. 19-cv-61053, in the Southern District of Florida; Case No. 20-13448, in the Eleventh Circuit Court of Appeals.

On September 9, 2019, the Plaintiffs/Relators filed an amended complaint alleging that NICA violated the Federal False Claims Act (“FCA”), 31 U.S.C. § 3729 *et seq.*, because NICA does not pay for expenses covered by Medicaid as the primary payor. The complaint asserted that the *Handbook* declares that NICA is the payor of last resort and that the Plan pays after available insurance or governmental programs have paid for medically necessary and reasonable expenses. In the Relators’ view, NICA is a “third party” under 42 U.S.C. § 1396a(a)(25)(A) and, as such, NICA should pay for expenses that would otherwise be covered by Medicaid because Medicaid is the “payor of last resort.” The Plaintiffs/Relators seek treble damages civil penalties and attorneys’ fees and costs for damages to the United States. On January 30, 2020, the United States notified the District Court that it would not intervene, but would continue its investigation.

On February 26, 2020, NICA filed a motion to dismiss the amended complaint arguing that: the Plan lacks capacity to be sued and, in any event, the amended complaint failed to state a claim against the Plan; as an arm of the State, NICA cannot be held liable under the FCA; the Relators’ claims fail under the Public Disclosure Bar; NICA is not a “third party” under 42 U.S.C. § 1396a(a)(25)(A); the amended complaint fails to allege a knowing violation; and the amended complaint does not identify any false claims or unpaid obligations.

On September 8, 2020, the United States District Court, Southern District of Florida, issued an order denying the motion to dismiss. In issuing the order, the District Court found that NICA is a third party and not an arm of the State and that sufficient circumstantial assertions were available to satisfy the knowledge element at this stage of the proceeding.

On December 20, 2020, NICA filed an opening brief with the United States Eleventh Circuit Court of Appeals requesting that the September 8, 2020, District Court order be reversed and the case be remanded to the District Court with instructions to dismiss with prejudice. As of June 1, 2021, the appeal is pending.

In response to our audit inquiry, NICA management indicated that the litigation of the issues bearing on a favorable or unfavorable outcome remains ongoing. As a result, the likelihood of a particular outcome cannot be reasonably made at this time, and a potential range of loss or recovery cannot be currently stated to a reasonable degree of certainty.

## **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 May 2021 through June 2021 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 meetings laws. The audit also included an examination of selected 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.
- 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, 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.



- Interviewed NICA management and compared the NICA *Benefit Handbook (Handbook)* and the *NICA Claims Manual (Claims Manual)* to applicable laws to determine whether the *Handbook* and *Claims Manual* were 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 279 individuals listed as contacts for the 221 participants active in the Plan as of April 30, 2021. We then combined and analyzed the survey responses from the 120 individuals who returned the survey.
- From the population of 98 claimant petitions filed with a Division of Administrative Hearings (DOAH) administrative law judge (ALJ) during the period July 2019 through April 2021, examined NICA records for 25 selected claimant petitions to determine whether NICA adhered to filing time frames established in State law.
- From the population of 29 NICA participant compensation awards executed during the period July 2019 through April 2021, examined NICA records for 10 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 June 2020, September 2020, December 2020, and March 2021 to determine whether NICA updated the present value of total claims costs on a quarterly basis in accordance with State law.
- From the population of 19,628 participant reimbursement claims paid during the period July 2019 through April 2021 and totaling \$34,085,871, examined NICA records for 25 selected participant reimbursement claims totaling \$150,251 to determine whether NICA ensured that participants were awarded compensation and that, prior to authorization, reimbursement requests were appropriately supported and allowable under State law. Additionally, we:
  - Examined NICA records for the 25 selected participant reimbursement claims to determine whether any potential conflicts of interest between NICA personnel or the NICA Board and the participant or contracted service and equipment providers requesting reimbursement were properly disclosed.
  - Reviewed NICA correspondence logs for the 25 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.
- To determine whether NICA established adequate controls to ensure the timely collection and remittance of assessment fees to the Plan, examined NICA records for:
  - 40 participating physicians and midwives, selected from the population of 1,536 physicians and midwives participating in NICA as of April 23, 2021, and with assessments totaling \$7,680,000.
  - 40 non-participating physicians, selected from the population of 80,876 medical doctors and 9,746 osteopathic physicians with active licenses as of May 13, 2021, and May 27, 2021, respectively.
  - 40 hospitals, selected from the population of 308 hospitals with active licenses as of May 13, 2021, including 19 hospitals with reported live births totaling 31,779 for the 2019 calendar year, selected from the population of 118 hospitals with reported live births totaling 214,909 for the 2019 calendar year.

- Analyzed NICA billing and payment data for the 86,963 non-participating physicians with assessment amounts due by January 1, 2020, and 118 hospitals with assessment amounts due by January 1, 2021, to determine whether NICA charged periodic interest fees to delinquent accounts.
- Interviewed NICA management, inspected NICA participant records, and reviewed DOAH case summaries for the 116 NICA cases with orders issued during the period July 2019 through April 2021 to determine whether participants had filed benefit disputes with DOAH and whether NICA had established processes to track denied claims for reimbursement.
- From the population of 1,713 general and administrative expenses, totaling \$6,165,766 and incurred during the period July 2019 through April 2021, examined NICA records for 97 selected expenses, totaling \$705,150, 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, VPN, 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 to determine whether Board meetings were publicly held, properly noticed, and promptly recorded in the public record during the period July 2019 through April 2021. Additionally, we examined NICA records to whether Board members did not have or properly disclosed any conflicts of interest with entities, Plan participants, or goods or service equipment providers discussed in Board meetings.
- To gain an understanding of ongoing NICA litigation, interviewed NICA management and NICA's general counsel, reviewed Sections 409.910 and 766.31, Florida Statutes, NICA records, and the legal orders and pleadings for case No. 19-cv-61053 in the Southern District of Florida, and case No. 20-13448 in the Eleventh Circuit Court of Appeals.
- 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***

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Chapter 2021-134, Laws of Florida, requires the Auditor General to conduct an operational audit of the Florida Birth-Related Neurological Injury Compensation Association and issue a written report by August 15, 2021. Pursuant to the provisions of Section 11.45, Florida Statutes, and Chapter 2021-134, Laws of Florida, 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 fluid and cursive, with a large initial "S" and "N".

Sherrill F. Norman, CPA  
Auditor General

# EXHIBIT A

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## 2021 NICA-RELATED LEGISLATION

Effective June 21, 2021, Chapter 2021-134, Laws of Florida, made several changes to the NICA Plan. Specifically, the law:



Requires NICA to administer the Plan in a manner that promotes and protects the health and best interests of birth-injured children.



Increases the maximum amount that may be awarded to parents or legal guardians of an infant who has sustained a birth-related neurological injury from \$100,000 to \$250,000 for pending petitions or claims filed on or after January 1, 2021, with the amount increased by 3 percent annually. This provision also applies retroactively to claims filed before January 1, 2021.



Increases the death benefit for an infant who sustained a neurological injury from \$10,000 to \$50,000. This payment is retroactive.



Increases the number of directors on NICA's Board of Directors from five to seven by adding a parent or legal guardian of a Plan participant and a representative of an advocacy organization for children with disabilities.



Increases transparency requirements for the NICA Board of Directors.



Provides an annual benefit of \$10,000 for the immediate family members living with the child for mental health services.



For the life of the child, provides parents or legal guardians with a reliable method of transportation for the care of the child or reimburses the cost of upgrading an existing vehicle to accommodate the child's needs when it becomes medically necessary for wheelchair transportation.



Increases housing assistance from \$30,000 to \$100,000 for the lifetime of the child, including home construction and modification expenses.



Creates code of ethics for specified personnel and members of the Board of Directors.

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## **EXHIBIT B**

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### **PARTICIPANT SURVEY QUESTIONS**

#### **NICA Benefit Handbook**

1. Did you receive the 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 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 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, 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.
11. If you answered 'No' or 'Sometimes' to questions 7 or 9, did you file a dispute with the Division of Administrative Hearings?

## MANAGEMENT'S RESPONSE

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August 12, 2021

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 me and allowing an opportunity to respond to the report. Please accept this as the formal response for NICA.

I 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. The testing appeared to be accomplished quickly and diligently and we appreciate the efforts made to perform the audit with minimum intrusion or disruption of the normal functional processes within our offices.

There were seven unique findings presented to which NICA would like to respond:

### **Plan Administration**

**Finding 1:** NICA had not established a mechanism to effectively and consistently document, account for, and track benefit denials or disputes.

**Response:** NICA is in the process of revising the CARES system to automatically track benefit denials and disputes and revising procedures to consistently and effectively monitor this process. While the current process warrants improvement to be more efficient and easier to monitor, NICA has not used attorneys for denials of benefits nor litigated a benefit issue since 2013. Improving the tracking and reporting of denials will help us better document those cases in which the benefit request is not initially approved for lack of documentation but is ultimately approved and paid. We are also looking at defining what a claim or request for benefits is, what an inquiry is, what a denial is and what a request for additional information should look like so that the system correctly identifies and monitors each of these situations. The work on the system now anticipates including procedures to communicate and track all of this automatically using function keys and codes to capture the correct information and templates generated by the system to assure consistent communication to the families

FLORIDA BIRTH-RELATED NEUROLOGICAL INJURY COMPENSATION ASSOCIATION  
KENNEY SHIPLEY • EXECUTIVE DIRECTOR  
P.O. BOX 14567 • TALLAHASSEE, FLORIDA 32317-4567 • (850) 488-8191  
FACSIMILE (850) 922-5369 • WWW.NICA.COM



of the appropriate actions taken by NICA and whether and what the dispute resolution method is available for that action.

**Finding 2:** Analysis of Plan participant survey responses indicated that the NICA *Benefit Handbook* could be enhanced to better inform participants of their benefits and rights and that NICA could take steps to ensure that benefit request decisions are documented and adequately explained to participants.

**Response:** Although the percentage of “satisfied” responses consistently exceeded the “dissatisfied” responses by a significant amount, NICA agrees that the NICA Benefit Handbook should be enhanced to better inform participants of their benefits and rights. Modifications to the Benefit Handbook to address the issues raised and others are in process and should be available in DRAFT on the NICA website by the time the final report is published. In addition, on the NICA website NICA is asking for input on this DRAFT Benefit Handbook so that we can understand additional enhancements that families would like to see. NICA has also set up a “Blast” email account to communicate with and update families with new information. NICA is currently using that to notify families of new benefits and procedures and to share answers to questions that have been raised by one or more families with all families to keep them better informed.

**Finding 3:** NICA records did not always include the rationale for denying or limiting participant claim reimbursements.

**Response:** NICA is in the process of establishing reason codes to utilize with denials or partial denials (limits on reimbursement) and procedures to utilize system generated template communications that will be issued and explain the limitation or denial in an understandable format. Once developed they will be included in the Benefit Handbook to help Families understand what to do when they receive one.

### **NICA Assessments**

**Finding 4:** NICA did not timely or consistently use all available remedies to collect delinquent assessment amounts from non-participating physicians. As of June 16, 2021, active non-participating physicians owed NICA \$14,367,193 for assessment amounts due for the 2016 through 2021 assessment years.

**Response:** In finding 4, the audit report states that the total outstanding non-participating physician assessments is \$14.4 million dollars for assessment years 2016-2021. NICA disagrees with this stated total. Based on the same data utilized by the auditors in preparing the audit report, NICA estimates the total for non-exempt, outstanding assessments to be closer to \$8.4 million rather than \$14.4 million. NICA believes the discrepancy between the two figures is due to the fact that the \$14.4 million total includes those physicians who are not required to pay the assessment as set forth in section 766.314(1)(b)4., Florida Statutes. Section 766.314(1)(b)4., Florida Statutes,



provides that the NICA assessment is “not applicable” to the physicians falling within the categories listed in that section, but, until NICA receives documentation demonstrating that a physician is exempt from paying the assessment, NICA sends an invoice for the annual assessment amount. NICA then flags those non-participating physicians who appear to be eligible for an exemption based on the license status on the Department of Health website. Additionally, past due payments are received on a rolling basis. Based on experience, NICA believes that the majority of the outstanding \$8.4 million will be received within the next 12 months.

In finding 4, the audit report also recommends that: “NICA management timely and consistently use all available remedies to collect delinquent assessment amounts.” As recognized in the audit report, however, the only mechanism available to NICA to enforce collection of the non-participating physician assessments is the filing of a lawsuit in county court as set forth in section 766.314, Florida Statutes. NICA routinely avails itself of this remedy but determined that it was more beneficial and cost effective to file suits in batches covering multiple assessment years to avoid incurring costs that NICA would likely not recover if suit is filed too soon and does not allow sufficient time for the physicians to document entitlement to the exemption set forth in section 766.314(1)(b)4., Florida Statutes. If NICA files suit against a physician who later provides documentation that the physician is exempt from paying the assessment, NICA must dismiss the suit and cannot recover any of the associated fees, court costs or attorney’s fees incurred in pursuing that suit. As mentioned above, based on NICA’s experience, the exempt physicians may take two or three years before they provide the requisite documentation. Filing in batches every few years, not only defrays costs but is more likely to result in collection of past due amounts since the exempt physicians have had ample time to provide documentation. There is no mechanism for NICA to require that physician timely provide documentation demonstrating that they are exempt. NICA includes this in the invoices, but there is no means afforded to NICA in statute to enforce this requirement.

The process of filing suit to enforce payment of the NICA assessments requires substantial time and cost to complete. While NICA is entitled to attorney’s fees and costs once a judgment is entered and the physician satisfies that judgment, NICA must pay upfront the costs associated with proper service of demand letters, filing fees, costs associated with serving the summons and attorneys’ fees. The audit report recommends that NICA timely avail itself of the remedy available to it but does not indicate what the auditors view as “timely.” NICA submits, it is simply not practicable or reasonable to file suit seeking payment of past due assessments that are not at least three to four years past due. To do so would require a significant dedication of staff resources and result in NICA unnecessarily incurring costs that it will not recover in many instances. During this timeframe, many of the physicians who are entitled to the exemption will provide the necessary documentation, thus obviating the need to file suit against them in year 4 and avoid incurring unnecessary costs to NICA.

On a going forward basis, NICA will ensure that it files suit seeking past due payments in a more consistent manner to timely collect the past due amount. For instance, currently, NICA is in the process of sending demand letters for delinquent physician assessments that are 5 years overdue. NICA will then proceed with filing suit in county court against those physicians that do not respond to the demand letters. NICA will work toward filing suit every two years to collect the past due assessments that are over 4 years past due.

### **Selected Administrative Activities**

**Finding 5:** NICA expenses associated with holiday luncheons for NICA personnel did not appear to be clearly necessary to the performance of NICA's statutory duties. Additionally, meals provided for NICA personnel and Board members were not limited to the amounts provided by State law.

**Response:** – Finding 5 relates to certain limited expenses questioned by the auditors. Each category of expenses will be addressed separately below:

- **General Administrative Expenses:** The audit report takes issue with NICA hosting two holiday luncheons for its NICA personnel in December 2019 and December 2020 with expenses totaling \$363 and \$421, respectively. As noted in the audit report, it is NICA's view that these luncheons benefit the morale of NICA's employees and were necessary to the performance of NICA's administration of the Plan. On a daily basis, NICA's nurse case managers work with families who care for their catastrophically injured children. While the nurse case managers find their work very important and rewarding, it can be emotionally taxing at times. NICA management viewed the provision of a small holiday lunch for its personnel as important for lifting morale. With that said, on a going forward basis, NICA will not utilize its administrative funds to provide for events of this nature. Additionally, with respect to the audit finding that NICA's chart of accounts did not readily allow coding for these types of expenses, NICA will review its chart of accounts and add additional fields, where necessary, to promote the appropriate recording of all administrative expenses.
- **Meals provided at the NICA Board and Medical Advisory Committee meetings:** The audit report addresses 2 NICA Board meetings and one Medical Advisory Committee meeting where NICA provided food in a buffet style manner for the Board members and attendees. Several people attend the Board and committee meetings including Board and Committee members, NICA staff, and various other parties such as investment consultants, actuaries and auditors who may be asked to present materials at these meetings. NICA contracted in advance with the hotel to have a buffet set up in the meeting room to allow the meetings to continue without breaking for meals. NICA staff, Board members, Committee members and other presenters were not reimbursed for meals when food was provided as part of the meeting. NICA viewed the provision of these meals as important to the performance of NICA's administration of the Plan.



When the meetings continue without breaking, the overall associated travel costs are potentially lessened because the members and staff can leave earlier in the day to travel home thereby reducing the costs of hotel and additional meals. On a going forward basis, however, NICA will comply with section 112.061, Florida Statutes regarding meals of this nature during NICA Board meetings or Medical Advisory Committee meetings.

- **Staff Travel Expenses:** The audit report questions certain limited travel reimbursements to NICA staff totaling \$1,046 as exceeding that authorized by section 112.061, Florida Statutes. The audit report cites section 112.061, Florida Statutes, as applicable to NICA. NICA, however, does not fit squarely within the definition of a “agency” or “public agency” as set forth in section 112.061(2)(a), Florida Statutes. Section 766.315(3), Florida Statutes, subjects to travel reimbursement pursuant to 112.061, but there is no specific application of that statute to NICA staff. As such, NICA adopted the following policy for travel expense reimbursement:

Without a receipt, meals will be paid at the rate of \$6 for breakfast, \$11 for lunch and \$19 for dinner, or the highest current amount allowable by the State of Florida regulations. With receipts, actual reasonable hotel and meal expenses may be reimbursed or the State of Florida approved per diem may be paid. To be eligible for breakfast travel must begin before 7:00 a.m., lunch travel must begin before 12:00 noon and dinner travel must end after 8:00 p.m.

As demonstrated by the above-quoted NICA policy, NICA is generally in compliance with the travel reimbursement requirements set forth in section 112.061. The only issue the auditors noted was that portion of NICA’s policy which permits NICA personnel to be reimbursed for or charge to a NICA issued credit card, the actual meal expense rather than limiting the costs to the statutory state rate noted above. Although NICA believes it was correct in allowing the questioned reimbursement pursuant to its policies, on a going forward basis NICA will follow the requirements of section 112.061, Florida Statutes. As recommended, NICA is in the process of updating its Procedures Manual to require that reimbursable meal expenses and meals charged to a NICA-issued credit card not exceed statutorily authorized reimbursement rates.

**Finding 6:** NICA controls did not promote the retention of text and instant messages in accordance with State public records laws.

**Response:** Use of NICA owned cellular phones for staff members, other than the Executive Director and Deputy Director, was implemented as part of the response to allow employees to work remotely during the COVID 19 pandemic.

NICA is researching methods to ensure that all text and instant messages are captured and retained in accordance with State law.

NICA is working with the provider to disable text messaging features from these devices and to find alternative means to allow remote personnel to have voice communication without text messaging.

### **Information Technology Controls**

**Finding 7:** Certain security controls related to user authentication for the network domain, NICA virtual private network (VPN), and Claims Accounting and Reserves Electronic System need improvement to ensure the confidentiality, integrity, and availability of NICA data and information technology resources.

**Response:** NICA takes the security and protection of the NICA entrusted data with the utmost care. NICA currently implements multilayered security controls to ensure the confidentiality, integrity and availability of NICA data and information technology resources. Additionally, both the network and CARES applications have separate security controls which include access, roles/permissions, and unique user credentials. HIPPA requires NICA to comply with physical, technical, and administrative safeguards to guarantee privacy, confidentiality, data integrity, and security for all information in motion and at rest. The physical controls span from facility access, device timeouts, and bitlocker, as well as, back-ups for each device and environment. Technical standards have been addressed in the previous comment. Administratively, each user signs non-competes, NARFS, and Confidentiality agreements. Training and policy manuals are provided all users. To further enhance security, many controls are managed at the policy level thereby reducing NICA exposure to risk. Finally, each device and the environment at large is further protected by virus and intrusion detection firewalls. NICA continuously monitors its environment and spends countless hours ensuring all software is current including releases (once evaluated for compatibility and risk) and patch management. NICA management will implement recommendations from the AG to further increase security controls related to user authentication for the network domain, NICA virtual private network and internal applications.

I believe NICA's actual and proposed corrective actions for each finding will satisfy the issues raised in the identified findings. If you have any questions or further recommendations, please let me know.

Sincerely,



Kenney Shipley  
Executive Director