



CHIEF FINANCIAL OFFICER
JIMMY PATRONIS
STATE OF FLORIDA

October 18, 2021

Mr. Jim DeBeaugrine, Interim Chair
Board of Directors
Florida Birth-Related Neurological Injury Compensation Association
P. O. Box 14567
Tallahassee, FL 32302

Dear Chair DeBeaugrine:

Earlier this month, you were provided the Office of Insurance Regulation's (OIR) draft Market Regulation, Operational Audit, of the Florida Birth-Related Neurological Injury Compensation Association (NICA) program. You have since reviewed and accepted OIR's findings as submitted.

As you are aware, when issues regarding NICA came to light, I asked OIR to audit NICA to which they agreed and initiated this operational audit. The stories of parents, and their children, going through challenges in dealing with NICA were clearly symptomatic of a flawed program. That's why we needed OIR to take a look at the nuts-and-bolts of how NICA operates to determine where shortcomings existed.

The findings of this report are not be surprising and reaffirm many of the complaints families have publicly expressed. As a father of two, some of these findings boggle my mind and raise basic questions, such as why is a program of this size doing record keeping with CD-ROMs? Why are denials not documented? Plus, is there *any* process for figuring out whether a procedure, or a piece of equipment, is medically necessary or not? These are very basic elements of running a program of this type, and NICA was unable to provide auditors with acceptable answers.

With all of OIR's findings and recommendations, this report will provide the NICA Board with a roadmap for getting the trajectory of this organization headed on the right course. You have my full support in reforming this program so families are treated with the dignity and respect they deserve. Too often government can operate like a heartless bureaucracy and we cannot allow NICA to function with indifference. These families deserve nothing less than Florida's full compassion and support.

Sincerely,

A handwritten signature in blue ink that reads "Jimmy Patronis".

Jimmy Patronis
Chief Financial Officer



**FINANCIAL SERVICES
COMMISSION**

**RON DESANTIS
GOVERNOR**

**JIMMY PATRONIS
CHIEF FINANCIAL OFFICER**

**ASHLEY MOODY
ATTORNEY GENERAL**

**NICOLE "NIKKI" FRIED
COMMISSIONER OF
AGRICULTURE**

October 18, 2021

The Honorable Jimmy Patronis
Chief Financial Officer
State of Florida
Florida Department of Financial Services
200 E. Gaines Street
Tallahassee, FL 32399-0301

SENT VIA EMAIL AND HAND DELIVERY

Re: Florida Birth-Related Neurological Injury Compensation Association (NICA) Market
Conduct Operational Audit

Dear Chief Financial Officer Patronis:

The Florida Office of Insurance Regulation (OIR) has conducted a market conduct operational audit of the Florida Birth-Related Neurological Injury Compensation Association (NICA) pursuant to sections 624.3161 and 766.315(5)(d), Florida Statutes (F.S.), per your request.

The audit was conducted in close consultation with Florida's Insurance Consumer Advocate, Tasha Carter, to analyze NICA's claims handling practices and determine if NICA complied with its statutory mandate to finance the reimbursement of actual expenses incurred by participant family members for medically necessary and reasonable care.

Within the audit, OIR made 15 separate findings and provides recommendations to the NICA Board of Directors for each of these findings to administer the plan in a manner that promotes and protects the health and best interests of children with birth-related neurological injuries. The findings and recommendations are as follows:

- **Finding 1:** NICA's process for determining whether a treatment or benefit is medically necessary is inadequate.
 - Recommendation: NICA's Board of Directors should develop and implement processes and procedures to ensure NICA's decisions regarding medical necessity are consistent and objectively applied.

- **Finding 2:** NICA imposes monetary limits when reimbursing participant families for actual expenses that are not substantiated by documentation to support that the amount reimbursed represents the reasonable charges prevailing in the same community for similar treatment of injured persons when such treatment is paid for by the injured person as provided for in Section 766.31(1)(c), F.S.
 - Recommendation: NICA’s Board of Directors should establish a process to ensure that the amounts reimbursed to participant families are substantiated and documented as the reasonable charges prevailing in the same community for similar treatment of injured persons when such treatment is paid for by the injured person, as established by Section 766.31(1)(c), F.S.
- **Finding 3:** NICA failed to properly document, in its claims system, claims denials or instances where claims or benefit inquiries submitted by participant families were not paid.
 - Recommendation: NICA’s Board of Directors should implement procedures to ensure that all instances where claims or benefit inquiries submitted by participant families, whether paid, unpaid or denied, are accurately documented in the claims system.
- **Finding 4:** NICA’s Benefit Disagreement process improperly forecloses participant families their right to file a petition with Division of Administrative Hearings (DOAH) to dispute the denial of a request for reimbursement, as provided for by Section 766.31(1)(c), F.S.
 - Recommendation: The Board of Directors should ensure the Benefit Disagreement process complies with Section 766.31(1)(c), F.S. The Board of Directors should review the nature of all denied claims or claims without payment at regularly scheduled intervals to ensure participant families are provided with their statutory rights.
- **Finding 5:** NICA failed to record complaints received from participant families and failed to record if or how complaints are resolved.
 - Recommendation: NICA’s Board of Directors should implement procedures that define the term “complaint” and require NICA to record and retain records of complaints received from any source and the resolutions of those complaints to ensure proper documentation. The Board of Directors should consider implementing the use of an Ombudsman appointed to provide participant families with an avenue to voice concerns and to formally resolve conflicts. The Board of Directors should review the nature of all complaints received at regularly scheduled intervals to assess the effectiveness of the program and to determine if improvements to the program are needed.
- **Finding 6:** NICA failed to maintain an outreach program to effectively communicate and assist participant families with information about compensation for actual expenses and other benefits available under the Plan.

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- Recommendation: NICA’s Board of Directors should implement a robust and continuous outreach and education program, including home visits, to assist participant families with accessing information about the Plan.
- **Finding 7:** NICA categorizes certain telephone or email communications received from participant families for requests for compensation to be “inquiries” because they were not a “complete claim.”
 - Recommendation: NICA’s Board of Directors should conduct an in-depth review of all claims terminology utilized in the Plan of Operation, claims procedures manuals, benefit handbooks and by NICA’s staff to ensure unambiguous and clearly defined claims terminology is provided to participant families.
- **Finding 8:** NICA’s 2020 Benefit Handbook, which is provided to participant family members upon receiving an award for compensation from DOAH, contains unclear and inconsistent instructions and guidelines.
 - Recommendation: NICA’s Board of Directors should review benefit handbooks and eliminate inconsistent instructions and guidelines.
- **Finding 9:** NICA’s processes place barriers, burdens and time restrictions on participant families seeking reimbursement for actual expenses related to medically necessary and reasonable care for participant family members.
 - Recommendation: NICA’s Board of Directors should develop and implement meaningful and lasting program and process improvements to remove unnecessary barriers, burdens and time restrictions.
- **Finding 10:** NICA’s claims data is incomplete and unreliable.
 - Recommendation: NICA’s Board of Directors should ensure that NICA’s claims system contains complete and accurate claims data.
- **Finding 11:** During the audit scope period, NICA failed to comply with Section 3.M. of NICA’s Plan of Operation by failing to include specific payment procedures, a benefit schedule, and specific procedures to assure the timely and reasonable payment of claims in the claims procedures manual; by failing to develop and include a dispute resolution system in the claims procedures manual; and by failing to maintain or utilize an up to date claims procedures manual.
 - Recommendation: The Board of Directors should ensure that NICA creates, and the Board approves an updated claims procedures manual that complies with Section 3.M. of the Plan of Operation and includes specific payment procedures, a benefit schedule and specific procedures to assure the timely and reasonable payment of claims.
- **Finding 12:** NICA utilizes and reimburses certain third-party vendors without written contracts and does not utilize a competitive bid process to select third-party vendors.
 - Recommendation: NICA’s Board of Directors should ensure that NICA enters into written contracts with all third-party vendors and develops a general business practice of utilizing a competitive bid process for the selection of third-party vendors.

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- **Finding 13:** NICA failed to maintain effective overall records management practices and a centralized, reliable records repository.
 - Recommendation: NICA’s Board of Directors should implement procedures to create and maintain a centralized, reliable, integrated, robust records management system.
- **Finding 14:** The auditors were unable to verify the accuracy of NICA’s reported number of participant families who are eligible to receive the additional \$150,000 award following the implementation of Senate Bill 1786.
 - Recommendation: NICA’s Board of Directors should verify the accuracy of the reported number of participant families eligible to receive the additional \$150,000 award.
- **Finding 15:** NICA failed to maintain accurate data related to participant families with deceased children and failed to timely issue the award for retroactive payments to participant families by July 1, 2021, as required by section 766.31(1)(d)2.b., F.S.
 - Recommendation: NICA’s Board of Directors should ensure that NICA maintains accurate and updated records for participant families. On an annual basis, NICA should utilize all means available to identify and locate eligible participant families and, only after exhausting all efforts and at the end of the required term, ensure the unpaid award is timely and accurately reported to DFS Bureau of Unclaimed Property.

Tasha Carter, Florida’s Insurance Consumer Advocate, agrees with the findings and recommendations outlined in OIR’s audit, which are consistent with her recommendations for the NICA Board of Directors. ICA Carter developed her recommendations following a series of meetings with NICA executive staff, feedback from participant families via a survey, direct communication with families and assisting families with specific inquiries. ICA Carter’s recommendations are as follows:

- Establish and annually update written policies and procedures governing the operations of NICA, including, but not limited to:
 - The handling of claims and reimbursement requests
 - The determination of benefit eligibility and benefit disbursement
 - Parental nursing care guidelines
 - The collection of current and past due physician/mid-wife and hospital assessments and non-compliance reporting
- Revise the Claims Manual to accurately reflect current and improved claims handling procedures.
- Revise the Benefit Handbook to include all available benefits, including: a brief description of the benefit, the amount of the benefit, the required documentation to be submitted at the time the benefit request is made and if prior authorization is required. The Handbook should be updated and shared with families at least annually.

- Revise the Plan of Operations to accurately reflect current and improved operational procedures.
- Hire an Ombudsman who will act as an advocate for the parents and legal guardians of the NICA participant and report directly to the NICA Board of Directors.
- Modify the CARES System to streamline the claims and reimbursement process and reduce the administrative burden on NICA families and NICA. The modification should include the creation of a NICA family portal that will allow the uploading of claims and reimbursement requests, along with related documentation; automatic notification to the assigned nurse case manager that documents have been uploaded for review; the ability to document the status and resolution of the claim, including corresponding action dates and payment disbursement information; and the ability for the NICA parent or legal guardian to review the status of the claim at any time. NICA families would be provided with a secure login to access their individual portal.
- In addition to an electronic system update, provide a written denial on NICA letterhead for each claim or reimbursement request that is denied which includes an explanation and basis for the denial (reference to the relevant statute, section in the Plan of Operations, etc.).
- Establish written contracts with all third-party vendors. At a minimum, contracts should include a scope of work for services performed, the compensation amount, payment schedule and contract term. NICA should use a competitive bid process similar to the State of Florida's for the selection of third-party vendors.
- Perform a biennial review of all licensed vendors to verify license is active and in good standing.
- Provide an Explanation of Benefits quarterly to the parents and legal guardians of each NICA participant, including each benefit request, the amount and outcome. Families should also be able to download an EOB at any time from the updated CARES system.
- Create a comprehensive orientation program to orientate families that are new to NICA; including a comprehensive review of the Benefit Handbook, the Claims Manual, the Plan of Operations, written policies and procedures, an overview of the NICA Board and its purpose and all other pertinent information.
- Offer a variety of virtual informational sessions or informational resources on relevant programmatic topics to ensure NICA families are continuously educated and informed. NICA should solicit families for topic suggestions.
- Make available bilingual printed resources and bilingual staff to ensure effective communication with all NICA families.

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DAVID ALTMAIER • COMMISSIONER
 200 EAST GAINES STREET • TALLAHASSEE, FLORIDA 32399-0305 • (850) 413-5914 • FAX (850) 488-3334
 WEBSITE: WWW.FLOIR.COM • EMAIL: DAVID.ALTMAIER@FLOIR.COM

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Pursuant to section 624.319, Florida Statutes and Rule 69N-121.066, NICA was allotted 30 days to review and respond to the draft report prior to finalizing it. NICA responded within 10 days of receipt of the report with no suggestions to the draft and indicated the Board would use the recommendations as they move forward.

Sincerely,



David Altmaier
Insurance Commissioner



Tasha Carter
Florida's Insurance Consumer Advocate



CC: NICA Board of Directors Interim Chair, Jim DeBeaugrine



SUPPORTIVE SERVICES FOR
FAMILIES & PHYSICIANS

October 13, 2021

Ms. Sheryl Parker ARM, MCM
Director, Property and Casualty Market Regulation
Florida Office of Insurance Regulation
200 E. Gaines St.
Tallahassee, FL 32399

Dear Ms. Parker,

I have received the draft audit report on the Florida Birth Related Neurological Injury Compensation Association (NICA). NICA accepts the findings therein and does not request or recommend changes. We appreciate the effort your office put into the report. It will be a valuable resource to the Board and our management team as we seek to improve services for the children and families served by the organization.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim DeBeaugrine".

Jim DeBeaugrine, MPA
Interim Chair



THE STATE OF FLORIDA

OFFICE OF INSURANCE REGULATION

MARKET REGULATION

OPERATIONAL AUDIT OF THE

FLORIDA BIRTH-RELATED NEUROLOGICAL INJURY

COMPENSATION ASSOCIATION

OCTOBER 1, 2021

BACKGROUND

The Florida Office of Insurance Regulation (OIR) conducted an operational audit (audit) of the Florida Birth-Related Neurological Injury Compensation Association (NICA) pursuant to Sections 624.3161 and 766.315(5)(d), Florida Statutes (F.S.) at the request of the Department of Financial Services (DFS). The scope period of the audit was January 1, 2017 through December 31, 2020 and included the review of NICA's implementation of certain legislative changes contained within Senate Bill 1786 (SB 1786) which became law on July 1, 2021.

NICA was established by the Florida Legislature in 1988 to administer the Florida Birth-Related Neurological Injury Compensation Plan (Plan). In part, the intent of the Legislature was to provide compensation, on a no-fault basis, for a limited class of newborns with birth-related neurological injuries. Participant family members and their parents or legal guardians give up their right to pursue other remedies as a condition of accepting benefits under the Plan, except in certain extreme cases, in accordance with Section 766.303(2), F.S.

With certain limitations, Section 766.31(1)(a), F.S. awards participant families with compensation for the actual expenses related to medically necessary and reasonable medical and hospital, habilitative and training, family residential or custodial care, professional residential, and custodial care and service, for medically necessary drugs, special equipment, and facilities, and for related travel for infants who sustain birth-related neurological injuries.

Section 766.31(1)(c), F.S. limits actual expenses to reasonable charges prevailing in the same community for similar treatment of injured persons when such treatment is paid for by the injured person and allows participant families receiving benefits under the Plan to file a petition with the Division of Administrative Hearing's (DOAH) administrative law judge to dispute the amount of actual expenses reimbursed or a denial of reimbursement.

During the audit's scope period, NICA was governed by a five-member Board of Directors.¹ Section 766.314(2)(a), F.S. requires NICA's Board of Directors to create and amend a Plan of Operation to ensure the efficient administration of the Plan and for the prompt processing of claims against and awards made on behalf of NICA. Sections 766.314(2)(a) and (b), F.S. require OIR to review and approve NICA's Plan of Operation or any amendments made by the Board of Directors. The original Plan of Operation was approved by the former Department of Insurance. Since 2003, when OIR was created, the Plan of Operation has been amended four times to update certain definitions, adopt amended statutory language or benefit changes, adopt new reporting requirements, and adopt amendments to processes related to investments and fund management. NICA's most current Plan of Operation was last approved by OIR on December 6, 2013.

NICA's Plan of Operation requires the Board of Directors to employ an Executive Director to serve as chief administrative staff person and to be responsible for the day-to-day operation of NICA. The Plan of Operation requires the Executive Director to develop a claims procedures manual to include payment procedures, a benefit schedule, a dispute resolution system, and other procedures to assure timely and reasonable payment of claims. The Board of Directors is required to approve the claims

¹ The composition of the Board of Directors was expanded to seven members in 2021 by Senate Bill 1786. The present members of NICA's Board of Directors were appointed after July 1, 2021 after the expiration of the audit's scope period.

procedures manual developed by the Executive Director. NICA's 2013 Claims Manual was the most current claims procedures manual in use at the time of the audit. During the audit, in addition to reviewing the pertinent statutes, the Plan of Operation, and the 2013 Claims Manual, the auditors reviewed NICA's 2020 Benefit Handbook, which is provided to participant family members upon receiving an award for compensation from DOAH. The auditors also reviewed documents produced by NICA and 10 sampled claims files representing a total of 2,064 lines of claims data.

The purpose of the audit was to analyze NICA's claims handling practices and determine if NICA complied with its statutory mandate to finance the reimbursement of actual expenses incurred by participant family members for medically necessary and reasonable medical and hospital, habilitative and training, family residential or custodial care, professional residential, and custodial care and service, for medically necessary drugs, special equipment, and facilities, and for related travel by participant family members.

FINDINGS AND RECOMMENDATIONS

Finding 1: NICA's process for determining whether a treatment or benefit is medically necessary is inadequate.

In addition to the Executive Director, NICA employs one case manager supervisor and six case managers who, according to NICA's position descriptions, are responsible for analyzing and recommending the payment of claims and negotiating prices for medically necessary items. When a request for the reimbursement of actual expenses related to the care of a participant family member is received, NICA's case managers are responsible for making the initial determination of medical necessity, as stated in the 2013 Claims Manual. NICA stated the case managers and the case manager supervisor often use Google to research and determine medical necessity. In cases where medical necessity remains in question, NICA's process becomes dependent on a number of variables including who the assigned case manager is and the judgment of the Executive Director, who makes determinations regarding medical necessity regardless of the fact that she has no medical training or credentials. While the auditors noted that the case managers and case manager supervisor appear to have a wealth of overall nursing experience, NICA's position descriptions do not require them to have specific expertise in obstetrics or birth-related medical conditions.

There is no procedure requiring NICA to consult with a physician or other qualified medical professional in active practice of the same specialty or a process in place to ensure two or more staff members consistently arrive at the same conclusion to ensure that similarly situated participant family members are receiving substantially similar benefits².

Recommendation: NICA's Board of Directors should develop and implement processes and procedures to ensure NICA's decisions regarding medical necessity are consistent and objectively applied.

² Section 409.9131(2)(b), F.S. contains Florida Medicaid's definition for medical necessity or medically necessary.

Finding 2: NICA imposes monetary limits when reimbursing participant families for actual expenses that are not substantiated by documentation to support that the amount reimbursed represents the reasonable charges prevailing in the same community for similar treatment of injured persons when such treatment is paid for by the injured person as provided for in Section 766.31(1)(c), F.S.

NICA's 2020 Benefit Handbook and 2021 Quick Reference Benefits List contain a number of monetary benefit limits. A specific list of benefit limitations contained in NICA's 2020 Benefit Handbook are contained within Appendix A of this report; and a specific list of benefit limitations contained in NICA's 2021 Quick Reference Benefits List are contained within Appendix B of this report.

NICA was unable to provide any documentation to support the imposition of these monetary limits or that such limits complied with the provisions of Section 766.31(1)(c), F.S.

Recommendation: NICA's Board of Directors should establish a process to ensure that the amounts reimbursed to participant families are substantiated and documented as the reasonable charges prevailing in the same community for similar treatment of injured persons when such treatment is paid for by the injured person, as established by Section 766.31(1)(c), F.S.

Finding 3: NICA failed to properly document, in its claims system, claims denials or instances where claims or benefit inquiries submitted by participant families were not paid.

NICA provided the auditors with claims data relevant to the audit's scope period. Claims data is typically maintained in two categories: claims with payment and claims without payment. The auditors determined that NICA only maintains records related to paid claims or claims with payment but fails to code or document instances in the claims systems of unpaid expenses, denied claims, or instances where claims or inquiries for the compensation of actual expenses for participant family members were not reimbursed.

During the review of the 10 sampled claims files, the auditors identified the following instances where the claims notes reflected instances of denied claims that were not coded or recorded as denied claims in the claims system:

- One claims file contained evidence that NICA failed to fully reimburse a participant family's request for supplies. The claims file contained no information or justification for NICA's failure to reimburse for the requested supplies;
- One claims file contained evidence that NICA failed to reimburse a participant family for a hotel stay related to certain therapy treatments because no prior authorization was requested or approved before the scheduled therapy visit. The same claims file also reflects that NICA failed to reimburse the participant family for care hours during times when the participant family member received certain therapy treatments. The claims file documents that NICA later overturned the decision; and
- One claims file contained evidence that NICA initially denied reimbursement of claims for

a participant family member until the participant family submitted a significant amount of documentation to support medical necessity and initiated numerous follow up emails and telephone calls to NICA.

Recommendation: NICA’s Board of Directors should implement procedures to ensure that all instances where claims or benefit inquiries submitted by participant families, whether paid, unpaid, or denied, are accurately documented in the claims system.

Finding 4: NICA’s Benefit Disagreement process improperly forecloses participant families their right to file a petition with DOAH to dispute the denial of a request for reimbursement, as provided for by Section 766.31(1)(c), F.S.

The Benefit Disagreement section contained within the 2020 Benefit Handbook states that if there is a disagreement regarding an “eligible benefit,” the issue is referred to a case manager supervisor. If the case manager supervisor is unable to resolve the dispute, the disagreement is referred to the Executive Director. If the disagreement remains unresolved, the participant can appeal to DOAH.

The language contained in the Benefit Disagreement section provides that the appeal process only applies to “eligible benefits” as defined and determined by NICA. Section 766.31(1)(c), F.S. provides participant families receiving benefits under the Plan with the right to file a petition with DOAH to dispute the amount of actual expenses reimbursed or a denial of reimbursement without regard to whether it is deemed an “eligible benefit” by NICA.

NICA confirmed that there is no formal procedure or process in place for providing participant family members with written denials. The statute does not require NICA to provide participant families with a written claims denial. The statute allows participant families receiving benefits under the Plan to dispute a denial of reimbursement. NICA confirmed that no participant family members have filed an appeal with DOAH since 2013.

Recommendation: The Board of Directors should ensure the Benefit Disagreement process complies with Section 766.31(1)(c), F.S. The Board of Directors should review the nature of all denied claims or claims without payment at regularly scheduled intervals to ensure participant families are provided with their statutory rights.

Finding 5: NICA failed to record complaints received from participant families and failed to record if or how complaints are resolved.

On April 6, 2017, a participant family testified in front of the Board of Directors stating in part, *“Change needs to happen in the NICA culture. It’s an overwhelming system that literally takes YEARS to navigate. I implore you...Help families...don’t put up brick walls...**Create a culture of trust and partnership.** I have many times over the past 16 or so years, felt NICA did not have a culture of being person-centered but denial driven.”* In response to this testimony, the Chair of NICA’s Board of Directors asked the Executive Director and staff to develop actionable steps to better address these concerns.

During the 2021 legislative session, several participant families voiced complaints and concerns related to the NICA program. One parent stated, *“I am hopeful now that there is legislation that is currently being drawn up to help families who are covered under NICA, so as to not have to jump through hoops and hell, to get the benefits that they rightly deserve for their children.”*

Florida’s Insurance Consumer Advocate and others conducted surveys throughout the course of 2021, the results of which contain valuable and meaningful feedback regarding both the positive and negative impacts of the NICA program on participant families.

NICA stated any complaint that has been received was resolved internally but NICA did not maintain or produce documentation to support the statement. NICA also stated without a definition or description of what a “complaint” is, it would be difficult for NICA to determine what should be maintained and how.

Recommendation: NICA’s Board of Directors should implement procedures that define the term “complaint” and require NICA to record and retain records of complaints received from any source and the resolutions of those complaints to ensure proper documentation. The Board of Directors should consider implementing the use of an Ombudsman appointed to provide participant families with an avenue to voice concerns and to formally resolve conflicts. The Board of Directors should review the nature of all complaints received at regularly scheduled intervals to assess the effectiveness of the program and to determine if improvements to the program are needed.

Finding 6: NICA failed to maintain an outreach program to effectively communicate and assist participant families with information about compensation for actual expenses and other benefits available under the Plan.

Up until 2017, NICA made home visits to participant families after receiving an initial award for compensation from DOAH and periodically thereafter, when necessary. No similar replacement outreach efforts to support participant families have been instituted since 2017.

Recommendation: NICA’s Board of Directors should implement a robust and continuous outreach and education program, including home visits, to assist participant families with accessing information about the Plan.

Finding 7: NICA categorizes certain telephone or email communications received from participant families for requests for compensation to be “inquiries” because they were not a “complete claim.”

Section 766.305(4), F.S. uses but does not define the term “complete claim.” This section of the statute is related to the initial claim for compensation under the Plan and not to requests for compensation of actual expenses related to medically necessary and reasonable care. Neither the term “inquiry” nor the term “complete claim” is defined in statute, the Plan of Operation, the 2013 Claims Manual, or the 2020 Benefit Handbook.

Recommendation: NICA’s Board of Directors should conduct an in-depth review of all claims terminology utilized in the Plan of Operation, claims procedures manuals, benefit handbooks,

and by NICA's staff to ensure unambiguous and clearly defined claims terminology is provided to participant families.

Finding 8: NICA's 2020 Benefit Handbook, which is provided to participant family members upon receiving an award for compensation from DOAH, contains unclear and inconsistent instructions and guidelines.

- Page 5 of the 2020 Benefit Handbook advises participant family members that most benefits, except emergencies, should have NICA's prior approval before incurring expenses. However, NICA advised the auditors during the onsite interviews that, to receive payment, it must first be demonstrated that a participant family member "benefitted from" or noticeably "progressed" as a result of receiving a certain therapy or treatment;
- Page 17 of the 2020 Benefit Handbook provides that although a participant has been determined to be eligible for benefits, participant family members should contact NICA before committing to the purchase of equipment or incurring other expenses because failure to do so "may" jeopardize the amount of reimbursement; and
- Page 17 of the 2020 Benefit Handbook states NICA may not reimburse or may reimburse at a lower amount for benefits that the participant family member would be eligible for under an insurance policy or program when the parent or legal guardian refuses to seek those benefits. However, Sections 766.31(1)(a)2. and 4., F.S. state that expenses for items or services that the participant family member has received, or is contractually entitled to receive, from any prepaid health plan, health maintenance organization, or other private insuring entity and pursuant to the provisions of any health or sickness insurance policy or other private insurance program are not subject to compensation by NICA.

Recommendation: NICA's Board of Directors should review benefit handbooks and eliminate inconsistent instructions and guidelines.

Finding 9: NICA's processes place barriers, burdens, and time restrictions on participant families seeking reimbursement for actual expenses related to medically necessary and reasonable care for participant family members.

- NICA required parents to sign a Perjury Statement in order to receive the \$150,000 parental award enacted under SB 1786, despite the legislation already providing eligibility criteria for participant families to receive the additional award. NICA discontinued this practice but only after it was disclosed during the audit;
- In cases where medical necessity was in question, NICA would only provide medical necessity forms directly to medical physicians and would not provide them to participant families even if requested. NICA also discontinued this practice after it was disclosed during the audit;

- Page 18 of the 2020 Benefit Handbook provides that if a participant family member receives treatment, evaluation or surgery outside of his insurance plan’s coverage area, or outside of the state of Florida, NICA alone determines, in advance, whether it will elect to pay for those benefits, even if the treatment, evaluation or surgery is medically necessary; and
- Page 18 of the 2020 Benefit Handbook limits the time participant families are allowed to submit requests for reimbursement to one year from the date incurred, which is not required by Florida statutes.

Recommendation: NICA’s Board of Directors should develop and implement meaningful and lasting program and process improvements to remove unnecessary barriers, burdens, and time restrictions.

Finding 10: NICA’s claims data is incomplete and unreliable.

- The auditors were unable to ascertain the timely and accurate payment of claims because the claims system contains incomplete records of dates and lacks supporting documentation and related communications with participant families;
- NICA’s claims system erroneously relabels participant family member claims numbers when claims data is exported into the reserves data;
- NICA’s staff failed to accurately or consistently code all claims reimbursements in the claims system;
- NICA permitted staff members who sign payment authorizations for claims reimbursements to override the pre-authorization limits contained within the claims system; and
- NICA failed to provide accurate claims payment worksheets to the auditors. In three instances out of the 10 claims files reviewed, parental awards or plaintiff attorney fees or defense costs were not included in the claims payment worksheets. However, these payments were reflected in the claims system, requiring the auditors to compare the claims payments worksheets with the claims system to ensure a full and accurate review of the overall claims documentation.

Recommendation: NICA’s Board of Directors should ensure that NICA’s claims system contains complete and accurate claims data.

Finding 11: During the audit scope period, NICA failed to comply with Section 3.M. of NICA’s Plan of Operation by failing to include specific payment procedures, a benefit schedule, and specific procedures to assure the timely and reasonable payment of claims in the claims procedures manual; by failing to develop and include a dispute resolution system in the claims procedures manual; and by failing to maintain or utilize an up to date claims procedures manual.

At the initiation of the audit, NICA provided its 2013 Claims Manual to the auditors in response to an information request for such documents. However, during the audit, NICA informed the auditors that the 2013 Claims Manual was outdated and no longer in use by NICA. No updated claims procedures manual has been developed or reviewed and approved by the Board of Directors since 2013.

Recommendation: The Board of Directors should ensure that NICA creates, and the Board approves, an updated claims procedures manual that complies with Section 3.M. of the Plan of Operation and includes specific payment procedures, a benefit schedule, and specific procedures to assure the timely and reasonable payment of claims.

Finding 12: NICA utilizes and reimburses certain third-party vendors without written contracts and does not utilize a competitive bid process to select third-party vendors.

NICA's claims system reflects that NICA reimbursed four medical opinion vendors \$467,251.06 and one IT vendor \$13,298.97 without written contracts during the audit scope period.

Recommendation: NICA's Board of Directors should ensure that NICA enters into written contracts with all third-party vendors and develops a general business practice of utilizing a competitive bid process for the selection of third-party vendors.

Finding 13: NICA failed to maintain effective overall records management practices and a centralized, reliable records repository.

The auditors visited NICA's offices in Tallahassee in May 2021 and observed boxes of paper records located throughout the offices. NICA utilizes CDs for some of its long-term storage, despite the fact that CDs can erode over time.

During the auditors' review of the sampled claims files, the auditors noted a significant number of documents were missing from the claims system and, in certain cases, were uploaded after NICA received an inquiry from the auditors. NICA stated that it had hired a third-party vendor to scan certain paper documents but was unable to provide an estimated completion date for this project.

Recommendation: NICA's Board of Directors should implement procedures to create and maintain a centralized, reliable, integrated, robust records management system.

IMPLEMENTATION OF SENATE BILL 1786

The scope of the operational audit included a review NICA's implementation of certain legislative changes contained within SB 1786, which was signed into law and became effective July 1, 2021.

Finding 14: The auditors were unable to verify the accuracy of NICA's reported number of participant families who are eligible to receive the additional \$150,000 award.

Section 3 of SB 1786 amended Section 766.31(1)(d)1.b., F.S., awarding parents or legal guardians who received an award before January 1, 2021, and whose child currently receives benefits, to receive a retroactive payment in an amount sufficient to bring the total award to \$250,000. As of August 6, 2021, NICA reported 215 families were determined to be eligible to receive the additional \$150,000 award and that all families were paid as directed on or before June 30, 2021.

Of the 215 families:

- 170 were paid the full lump sum;
- 35 families requested the funds be “held;” and
- 16 families were paid “partial” benefits with the remainder held at the family’s request.

The auditors were unable to verify the accuracy of the reported numbers which total 221 families, not the 215 families reported by NICA.

Recommendation: NICA’s Board of Directors should verify the accuracy of the reported number of participant families eligible to receive the additional \$150,000 award.

Finding 15: NICA failed to maintain accurate data related to participant families with deceased children and failed to timely issue the award for retroactive payments to participant families by July 1, 2021, as required by Section 766.31(1)(d)2.b., F.S.

Section 3 of SB 1786 also amended Section 766.31(1)(d)2.b., F.S., awarding parents or legal guardians who received an award and whose child died since the inception of the program, a retroactive payment in an amount sufficient to bring the total award paid to \$50,000 which must be paid by July 1, 2021.

As of September 17, 2021, NICA reported that 206 families were determined to be eligible to receive the additional \$40,000 award. Of the 206 families, 155 families have been paid. In the remaining instances:

- 50 families have not been paid because NICA did not maintain contact or up-to-date records for these family members; and
- 1 participant was identified as a ward of the state of Texas and multiple attempts to identify and contact a parent or legal guardian have gone unanswered.

The failure of NICA to maintain accurate data related to participant families prevented NICA from fulfilling its statutory obligation to issue an award for retroactive payments to those families.

NICA reported that it has hired a private detective and sent certified letters in an effort to locate and pay these families the remaining benefits. NICA also reported that it will turn all funds pertaining to non-responsive participant families over to the DFS Bureau of Unclaimed Property within the required timeframe³.

³ Chapter 717, F.S. requires unclaimed property assets to be held for a set period of time, usually five years.

Recommendation: NICA’s Board of Directors should ensure that NICA maintains accurate and updated records for participant families. On an annual basis, NICA should utilize all means available to identify and locate eligible participant families and, only after exhausting all efforts and at the end of the required term, ensure the unpaid award is timely and accurately reported to DFS Bureau of Unclaimed Property.

CONCLUSION

This operational audit of NICA was designed to analyze the extent to which NICA’s claims handling practices complied with its “statutory mandate to finance medically necessary and reasonable care, services, equipment, and travel for a limited class of catastrophic injuries for birth- related neurological injuries.⁴” This audit identifies a number of areas that need improvement if NICA is to be in compliance with its statutory mandate outlined in Section 766.303, F.S. “to administer the Plan in a manner that promotes and protects the health and best interest of children with birth-related neurological injuries.⁵” This audit report and the Findings are the result of a factual, data-driven analysis of NICA’s claims handling practices.

⁴ The Department of Financial Services (DFS) requested that OIR conduct an operational audit of NICA. The purpose of the audit was to focus on the extent to which NICA’s claims handling practices complied with its statutory mandate to finance medically necessary and reasonable care, services, equipment, and travel for a limited class of catastrophic injuries for birth-related neurological injuries.

⁵ SB 1786 added Section 766.303(4), F.S. which requires NICA to administer the Plan in a manner that promotes and protects the health and best interests of children with birth-related neurological injuries.

APPENDIX A

Benefit Limitations contained in NICA’s 2020 Benefit Handbook⁶

| Listed Benefit | Limitation Imposed |
|---|---|
| Equipment | <ul style="list-style-type: none"> • Equipment not provided includes jogging strollers and other equipment used solely for convenience or recreation which is not medically necessary. |
| Transportation Mileage | <ul style="list-style-type: none"> • Mileage for one trip to the pharmacy per month for prescriptions related to the participant family member’s birth injury at a rate of \$.23 per mile for gasoline if using a NICA provided van or \$.445 per mile if using a privately owned vehicle. • Mileage for medical appointments or pre-approved travel at a rate of \$.23 per mile if using a NICA provided van. |
| Travel | <ul style="list-style-type: none"> • Reimbursement for airline travel and meals for only one parent. |
| Handicapped Accessible Vans | <ul style="list-style-type: none"> • Participant family members must be 6 years of age or weigh 45 lb. • The cost of excess insurance coverage beyond “basic mandatory insurance plus comprehensive and collision.” • Van replacement at 7 years or \$150,000 miles. NICA reviews the vehicle’s service history and may not replace the van if not properly maintained. |
| Augmentative Communication Technology | <ul style="list-style-type: none"> • Payment for reasonable repairs and replacement after 5 years. |
| Privately-Owned Housing Assistance & Total Lifetime Housing Benefit | <ul style="list-style-type: none"> • \$30,000 one-time funding for modification to a non-rental home currently owned and occupied by the participant family. • NICA’s construction manager or other qualified professional determines the feasibility of the modification and if the needs of the participant family member would be met in the contemplated project. • During the onsite interviews, the Executive Director also mentioned that this amount may be stipulated in the initial award issued by the administrative law judge. |
| Rental Housing Assistance | <ul style="list-style-type: none"> • NICA will reimburse the difference between the former monthly rental payment and the cost for an appropriate handicapped accessible rental unit of similar size and quality based on cost per square foot. • Substantial increases in square footage of the handicapped accessible unit must not exceed the overall guidelines utilized when NICA constructs additional space for a participant family member. • Up to \$2,000 for qualified moving expenses for a one-time move to a handicapped accessible home or rental unit. The Plan may require certification of the rental unit’s suitability prior to providing reimbursement. |

⁶ The amounts reflected are based on the language contained in the 2020 Benefit Handbook and do not reflect the amendments made to Florida statutes due to SB 1786 that became effective July 1, 2021.

| | |
|--------------------|--|
| Diapers | <ul style="list-style-type: none"> • Reimbursement begins at age 3. |
| Pureed Food | <ul style="list-style-type: none"> • Reimbursement begins at age 2. • Reimbursement amount is limited to \$2.05 per jar or pouch for pre-processed baby food. • NICA encourages parent to use fresh foods and allows up to \$500 to purchase a blender with a minimum 3-year replacement cycle. • The actual fresh food to be processed, including nuts, seeds, nutrients, and supplements are not eligible for reimbursement. |
| Insurance Premiums | <ul style="list-style-type: none"> • NICA “may” reimburse for the participant family member’s portion of a health insurance premium on a prospective basis, only if reimbursement is requested. • NICA reserves the right to calculate the appropriate premium that will be reimbursed on a pro-rata basis. |

APPENDIX B

Benefit Limitations contained in NICA's 2021 Quick Reference Benefits List⁷

| Listed Benefit | Limitation Imposed |
|---|--|
| Annual Therapy Camp | <ul style="list-style-type: none">• Limited to \$2,000 per year |
| Augmentative Communication Technology | <ul style="list-style-type: none">• Computer (limit \$1,000 if no adaptive programs)• iPad (limit \$500 if not adaptive programs) |
| Special Socks for AFOs, braces or other orthotics | <ul style="list-style-type: none">• 4 pairs (duration not specified) |
| Shoes to fit with AFOs, braces or other orthotics | <ul style="list-style-type: none">• 2 pairs per year |
| Guardianship costs | <ul style="list-style-type: none">• One-time benefit up to \$2,500 |
| Electric Stipend | <ul style="list-style-type: none">• \$100 monthly amount to off-set additional electricity costs |

⁷ The amounts reflected are based on language contained in the 2021 Quick Benefits List and do not reflect the amendments made to Florida statutes due to SB 1786 that became effective July 1, 2021.



www.FLOIR.com

**J. Edwin Larson Building
200 E. Gaines Street
Tallahassee, Florida 32399
Phone: (850) 413-3140**