

# FLORIDA HOUSE OF REPRESENTATIVES

## BILL ANALYSIS

*This bill analysis was prepared by nonpartisan committee staff and does not constitute an official statement of legislative intent.*

**BILL #:** [HB 1291](#)

**TITLE:** Florida Birth-Related Neurological Injury Compensation Association  
**SPONSOR(S):** Anderson

**COMPANION BILL:** [SB 1668](#) (Burton)

**LINKED BILLS:** None

**RELATED BILLS:** None

### Committee References

[Insurance & Banking](#)

17 Y, 0 N

[State Administration Budget](#)

[Commerce](#)

## SUMMARY

### Effect of the Bill:

The bill amends operational and financial requirements for the Florida Birth-Related Neurological Injury Compensation Association (NICA), codifies current benefit policies, and increases access to psychotherapy providers. It requires continuous comprehensive major medical health coverage for the participant or enrollment in Medicaid, if eligible, and requires the Birth-Related Neurological Injury Compensation Plan ("Plan") to cover a participant's premiums and out-of-pocket costs. For Medicaid services furnished to Plan participants, the bill requires NICA to compensate the Medicaid program through the third-party liability. The bill authorizes NICA to recoup overpaid expenses via an administrative proceeding.

The bill revises NICA financial oversight by establishing timelines for existing provider assessments to ensure timely collection, requiring NICA to perform actuarial soundness analyses, revising requirements for management of Plan assets and liabilities, revising the actuarial valuation review process conducted by the Office of Insurance Regulation (OIR), restructuring the remedies available to OIR for addressing potential financial unsoundness of NICA, and increasing the limit on the fund transfer by OIR required for instances of inadequate cash flow.

### Fiscal or Economic Impact:

The bill may have an indeterminate fiscal impact on state government and the private sector.

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## ANALYSIS

### **EFFECT OF THE BILL:**

The bill makes several changes to the governing framework of the [Florida Birth-Related Neurological Injury Compensation Association \("NICA"\)](#), relating to the petition process, Medicaid payments, compensation awards, and financial solvency.

### **Definition of "Participant"**

The bill defines "participant" to mean "the person who suffered a birth-related neurological injury as an infant and who accepted compensation under the plan by final order entered by an administrative law judge pursuant to [s. 766.309, F.S.](#)" (Section 2). The bill replaces the terms "infant" and "child" with "participant." According to NICA, 40% of its participants are adults.<sup>1</sup>

### Petition Process

<sup>1</sup> Email from Hilary Brazzell, External Affairs Manager, Florida Birth-Related Neurological Injury Compensation Association, NICA Information (Jan. 28, 2026).

**STORAGE NAME:** h1291a.IBS

**DATE:** 1/29/2026

The bill revises the definition of “claimant” to mean any person who files a claim, regardless of whether they’re seeking compensation or not. It also substitutes the term “injuries” for “injury claims.” The bill also removes references to “compensation” from the petition filing process, allowing claimants who are neither the participant nor a family member of the participant to file a petition with the Division of Administrative Hearings (DOAH). (Sections [2](#), [3](#), and [4](#)).

### **Medicaid and Health Care Coverage for the Participant**

The bill authorizes the Agency for Health Care Administration (“AHCA”) to recover the full amount of all medical assistance provided by Medicaid on behalf of recipients to the full extent of third-party benefits, including incurred costs of NICA plan participants. (Section [1](#)).

The bill requires NICA to reimburse AHCA for fee-for-service claims and capitation payments for participants enrolled in Medicaid, as well as for the payment of administrative and support costs associated with the provision of the Medicaid services. (Section [6](#)).

The bill requires a family member to continuously maintain comprehensive major medical health coverage for the participant. A family member must obtain insurance coverage within 60 days after an administrative law judge enters a final order approving a claim for compensation or apply for Medicaid coverage within 30 days after entry of such order. If the participant is ineligible for Medicaid, the family member must obtain other coverage within 60 days after receipt of a Medicaid denial. A family member of an individual who is a participant on June 30, 2026, must obtain the required coverage for the participant by January 1, 2027. (Section [6](#)).

### **Compensation Awards**

The bill revises the types of compensation of actual expenses for medically necessary care or services an administrative law judge may award. The bill provides the following changes in benefits:

- Codifies coverage of medically necessary dental services.
- Expands coverage of behavioral health services for the participant’s family. It adds coverage for psychotherapeutic services for any relative who resided with the participant, rather than only the father, mother, or legal guardians.
  - Such relatives will share in the aggregate annual benefit of \$10,000 currently allotted for these services for those immediate family members. In addition, the bill expands the potential providers covered to include psychiatrists and psychotherapists who maintain equivalent licensure in another jurisdiction.
- Codifies coverage for legal costs associated with establishing and maintaining guardianship for a participant.
- Revises the current statutory benefit for transportation to provide family members, rather than only parents and guardians, with a reliable method of transporting the participant’s wheelchair and medically necessary equipment. The bill expands the type of vehicles covered to include vehicles rather than just vans.
- Clarifies the coverage of housing assistance benefit of up to \$100,000 for the life of the participant to include, but is not limited to, a down payment on a new home, and moving expenses. Currently, this benefit includes home construction and modification costs.
- Requires NICA to reimburse plan participants for the payment of major medical health insurance coverage, which includes the premium and any cost sharing incurred by the participant.
- Clarifies that NICA will not provide compensation for professional custodial care provided by a family member while such care is being provided by another person or entity or the family member is being compensated from another source of work during the same time for which compensation is sought from NICA.
- Expands the list of individuals eligible to receive a periodic payment of an award of up to \$250,000 to include family members instead of only parents or legal guardians. (Section [6](#)).

The bill provides that in the case that NICA believes an overpayment was made and the family member disputes that an overpayment has occurred, NICA is authorized to file a petition for DOAH review of an overpayment for a determination of the amount, if any, to be recouped by NICA. (Section [6](#)).

### **Financial Soundness of NICA**

Current law requires NICA to estimate the present value of the total cost of a claim within 60 days after a claim is filed and to update these estimates quarterly based on the actual costs incurred by NICA. The bill requires NICA to submit these quarterly estimates to OIR within 10 business days after completion. (Section [7](#)).

The bill also requires NICA to calculate whether the plan is actuarially sound after the completion of its quarterly revisions of claims estimates. The bill defines "actuarially sound" as "that the total plan assets available to fund future liabilities are equal to or greater than 90 percent of the present value of total estimated liabilities excluding any risk margin." This term is used in the NICA provisions; however, it is currently not defined. (Section 2).

The bill defines "risk margin" as "an additional, explicit allowance above the best-estimate reserve to reflect uncertainty in future claim payments, including variation in claimant life expectancy and the number and cost of pending or unreported claims. The risk margin is not included in the reserve amount used to calculate the funding ratio." (Section [2](#)).

If NICA determines the plan is not actuarially sound, NICA must immediately notify OIR. Then, OIR must review NICA's calculations and, within 60 days after NICA's notification, determine whether to initiate an actuarial valuation, and notify NICA of its determination. OIR must, at a minimum, make its determination based on the degree to which NICA's calculations indicate that the plan is not actuarially sound, the direction and consistency of recent trends in the calculations of the plan's actuarial soundness, and the length of time since the most recent actuarial analysis conducted by OIR and until the next biennial valuation. The OIR must initiate such actuarial valuation within 30 days after its determination there is a need for a valuation. (Section [7](#)).

The bill requires OIR to make an actuarial valuation as provided upon calculation and notification by NICA that the plan is not actuarially sound, in addition to the current requirement that OIR biennially review NICA's actuarial valuation. (Section [7](#)).

The valuation by OIR must be based on the assets and liabilities of the plan for the calendar year before the year in which the actuarial valuation is due. Further, OIR must determine whether the plan has adequate estimated cash flows for the following fiscal year, whether, based on actuarial valuation, the plan is actuarially sound, and if not, whether the plan is likely to return to actuarial soundness before the next biennial review. (Section [7](#)).

The bill requires that, if OIR determines that the plan lacks adequate cash flow for the following fiscal year pursuant to its review, OIR must authorize a transfer of up to \$50 million from the Insurance Regulatory Trust Fund to NICA within 30 calendar days. Currently, OIR is authorized to transfer up to \$20 million from the Insurance Regulatory Trust Fund if these conditions are met. (Section [7](#)).

The bill requires that, if OIR finds that the plan is not likely to return to actuarial soundness before the next biennial review, OIR must, within 60 calendar days after this finding, order one or more of the following actions:

- Require each licensed casualty insurer writing liability insurance, malpractice insurance, and miscellaneous casualty insurance to pay into NICA an annual assessment that is calculated to generate a total amount no greater than the amount required to achieve actuarial soundness of the plan within 5 years after the date of the order.
  - The assessment must be made on the basis of net direct premiums written for the business activity used as the basis for each such insurer's inclusion as a funding source for the plan in the state during the prior year ending December 31, as reported to OIR, and must be in proportion that the net direct written premium written for each insurer on account of the business activity forming the basis for its inclusion in the plan bears to the aggregate net direct premiums for all such business activity written in this state by all such insurers.

- The annual assessment is capped at 0.25 percent of the insurer's net direct premiums written. An assessment may not extend five years after the date of the order. Insurers are authorized to recoup their assessments through a surcharge on future policies, a rate increase applicable prospectively, or a combination of the two.
- Provide that, if the actuarial soundness cannot be achieved through the assessment on casualty insurers, OIR is authorized to increase the assessments on hospitals and physicians on a proportional basis to generate a total amount of revenue no greater than the amount required to maintain the plan on an actuarially sound basis. (Section [7](#)).

The bill requires that if NICA finds that the plan is not actuarially sound and the insurer assessments and hospital and physician assessments are insufficient to achieve actuarial soundness of the plan, NICA must within 60 days of such finding, notify the Governor, the President of the Senate, the Speaker of the House of Representatives, and OIR. If NICA issues the notice, it may not accept any new claims without express authority from the Legislature. However, this provision does not preclude NICA from accepting any claim if the injury occurred 18 months or more before the effective date of the claim suspension. Under current law, for the 2025-2026 fiscal year, NICA is authorized to accept new claims during the fiscal year if the total current estimates exceed 100 percent of the funds on hand and the funds that will be available to NICA within the next 12 months. (Section [7](#)).

The bill does not make changes to the amount paid by hospitals and physicians as annual assessments. (Section [7](#)).

### **Board of Directors**

The bill substitutes the one board director representative for a parent or legal guardian of an injured infant with one family member of a participant. (Section [8](#)).

### **Effective Date**

The bill provides an effective date of July 1, 2026. (Section [9](#)).

### **FISCAL OR ECONOMIC IMPACT:**

#### **STATE GOVERNMENT:**

The bill increases, from \$20 million to \$50 million, the funds that would be transferred from the Insurance Regulatory Trust Fund in the event NICA experiences inadequate cash flow. The Insurance Regulatory Trust Fund is used by DFS and OIR to cover their expenses in the discharge of their administrative and regulatory powers and duties, and the bill may reduce the funds available to cover those costs. NICA, on the other hand, would receive an additional \$30 million to cover claims and expenses.

OIR may experience workload increases related to the bill's more rigorous, actuarial, approach to NICA financial oversight. The Office can absorb these costs within existing resources.

#### **PRIVATE SECTOR:**

The bill may have an indeterminate economic impact on the private sector. The bill may have an indeterminate impact on obstetricians' malpractice premiums and on patients' medical costs to the extent that the bill may preserve the current obstetrics tort environment.

Additionally, the bill expands certain benefits to NICA participants, which will assist parents, other family members, and legal guardians in funding medical and legal expenses and other necessary services for the care of plan participants.

## RELEVANT INFORMATION

### SUBJECT OVERVIEW:

#### [Florida Birth-Related Neurological Injury Compensation Association \(NICA\).](#)

In 1988, the Legislature established the Florida Birth-Related Neurological Injury Compensation Plan (Plan) to provide compensation, on a no-fault basis, for a limited class of catastrophic birth-related neurological injuries that result in unusually high costs for custodial care and rehabilitation. The Legislature ventured to design the Plan to stabilize and reduce malpractice insurance premiums for OB/GYNs.<sup>2</sup> To manage the Plan, the Legislature created the Florida Birth-Related Neurological Injury Compensation Association (NICA).<sup>3</sup>

#### [Board of Directors](#)

To manage the Plan, the Legislature created NICA as an independent association governed by a seven-member board of directors.<sup>4</sup> Although NICA is not a state agency, board, or commission, the Chief Financial Officer (CFO) appoints NICA board members for staggered terms of three years or until the CFO appoints their successors. While there is no limit on the number of terms a director may serve, current law prohibits a director from serving on the board for more than six consecutive years.<sup>5</sup> The Governor or CFO may remove a NICA board director from office for misconduct, malfeasance, misfeasance, or neglect of duty in office.<sup>6</sup>

#### [Petition Process](#)

##### [DOAH Jurisdiction](#)

A recent opinion from the First District Court of Appeal (DCA) put at issue whether DOAH has jurisdiction over claims involving parents or legal guardians who assert that they do not seek compensation under the plan and assert that they are not “claimants” as the term is currently defined in the NICA statutes.<sup>7</sup> That opinion was subsequently withdrawn by the First DCA.<sup>8</sup> NICA has expressed concerns that while the opinion was not binding, the issue of whether an ALJ has jurisdiction to enter a Final Order in a case in which a NICA claimant is not seeking compensation from the plan may be affirmatively raised in future proceedings.<sup>9</sup>

##### [Claim Adjudication](#)

A prospective plaintiff must exhaust all administrative remedies at the Division of Administrative Hearings (DOAH)<sup>10</sup> before he or she may pursue medical malpractice litigation for a birth-related neurological injury. Current law vests the presiding administrative law judge (ALJ) with exclusive original jurisdiction to hear claims filed for birth-related neurological injury compensation under the Plan.<sup>11</sup> The ALJ makes a determination of

<sup>2</sup> [S. 766.301, F.S., s. 766.303\(1\), F.S.](#)

<sup>3</sup> See [S. 766.302\(1\), F.S.](#)

<sup>4</sup> [S. 766.315\(1\), F.S., s. 766.315\(4\), F.S.](#) The board of directors is composed of one citizen representative, one representative of participating physicians, one representative of hospitals, one representative of casualty insurers, one representative of physicians other than participating physicians, one parent or legal guardian representative of an injured infant under the Plan, and one representative of an advocacy organization for children with disabilities.

<sup>5</sup> [S. 766.315\(1\), F.S.](#) The CFO may not appoint a participating physician named in a pending petition for a claim to the board. A NICA board member who is concurrently a participating physician may not vote on any board matter relating to a claim accepted for an award for compensation if the physician is named in the petition for the claim. [s. 766.315\(2\)\(a\), F.S.](#)

<sup>6</sup> [S. 766.315\(2\)\(c\), F.S.](#) Current law applies a code of ethics to board directors, the NICA executive director, and NICA senior manager employees. In addition, as a condition of employment, all prospective NICA employees must sign and submit a conflict-of-interest statement, which attests that they do not have a conflict of interest. [s. 766.3145, F.S.](#)

<sup>7</sup> *Shands Jacksonville Medical Center, Inc. v. Chavez*, 2024 WL 5059326 (Fla. 1st DCA 2024).

<sup>8</sup> *Shands Jacksonville Medical Center, Inc. v Chavez*, 416 So.3d 1226 (Fla. 1st DCA 2025).

<sup>9</sup> Florida Birth-Related Neurological Injury Compensation Association, *HB 1291/SB 1668 Florida Birth-Related Neurological Injury Compensation Association Summary and Analysis*, at 9, January 8, 2026.

<sup>10</sup> The Division of Administrative Hearings is housed within the Florida Department of Management Services.

<sup>11</sup> [S. 766.304, F.S., s. 766.305\(1\), F.S.](#) A claimant may appeal a DOAH order to the District Court of Appeal. [s. 766.311, F.S.](#)

whether a claim is compensable. To this end, the ALJ considers all available evidence related to the nature of the injury alleged as well as the immediate circumstances surrounding the alleged injury.<sup>12</sup>

### *Adjudication*

If the ALJ determines a claim is compensable, meaning the infant sustained a birth-related neurological injury and that obstetrical services were delivered by an attending or supervising participating physician at the infant's birth, current law requires the ALJ to make an award providing compensation.<sup>13</sup>

If the ALJ determines a claim is compensable, the rights and remedies granted by the Plan on account of a birth-related neurological injury become the exclusive remedy, which means the successful claimant is barred from pursuing a medical malpractice claim against any person or entity directly involved with the labor, delivery, or immediate postdelivery resuscitation during which a birth-related neurological injury occurs.<sup>14,15</sup> In addition, an award may not be rendered if the claimant recovers under a settlement or a final judgment in a civil action.<sup>16</sup>

If the ALJ determines a claim is not compensable, current law authorizes him or her to file a medical malpractice lawsuit.<sup>17</sup>

### *Awards Approved without a Determination*

After a claimant files a petition for claim under the Plan, DOAH serves the Florida Birth-Related Neurological Injury Compensation Association (NICA) with a copy of the petition.<sup>18</sup> After its own independent review, NICA may accept the claim for compensation and ask the ALJ to approve the claimant's claim as compensable. The ALJ may, without determining whether the claim is compensable, approve such claim as compensable.<sup>19</sup> If the claimant accepts an award under the Plan benefits, current law precludes the claimant from bringing or continuing a medical malpractice lawsuit.<sup>20</sup>

## **Compensation Awards**

### Lifetime Benefits

Once an ALJ determines a child is eligible under the Plan, the child is covered for life, and no other compensation from a medical malpractice lawsuit or settlement is available. Instead, there are lifetime benefits and care available through the Plan, which include actual expenses for:<sup>21</sup>

- medical and hospital services;
- rehabilitative services and training;
- family residential or custodial care;
- professional residential care;
- medications;
- special equipment and facilities; and
- related travel expenses.

<sup>12</sup> [S. 766.309, F.S.](#)

<sup>13</sup> [S. 766.31\(1\), F.S.](#)

<sup>14</sup> [S. 766.304, F.S.](#)

<sup>15</sup> However, current law does permit plaintiffs to bring a civil action in cases where there is clear and convincing evidence of bad faith, malicious purpose, or willful and wanton disregard of human rights, safety, or property. [S. 766.303\(2\), F.S.](#)

<sup>16</sup> [S. 766.304, F.S.](#)

<sup>17</sup> [S. 766.304, F.S.](#) Current law tolls the five-year statute of limitations period for birth-related neurological injury administrative claims pending or on appeal. [S. 766.306, F.S.](#), see [S. 766.313, F.S.](#)

<sup>18</sup> [S. 766.305\(2\), F.S.](#)

<sup>19</sup> [S. 766.305\(7\), F.S.](#)

<sup>20</sup> [S. 766.304, F.S.](#)

<sup>21</sup> [S. 766.31, F.S.](#)

At a minimum, immediate family members who reside with the covered child are entitled to a total annual benefit of \$10,000, to be shared amongst themselves, for psychotherapeutic services obtained from licensed psychologists and psychotherapists.<sup>22</sup>

For the life of the covered child, the Plan must also provide the child's parents or legal guardians with a reliable method of transportation, accounting for the special accommodations required for the covered child regardless of the child's age or weight.<sup>23</sup> In addition, the Plan must fund home construction and modification costs, which current law caps at a lifetime limit of \$100,000 in housing assistance.<sup>24</sup>

Current law limits actual expenses to the reasonable prevailing charges within the community for similar treatment of injured persons when the injured person pays for the treatment. The parents or legal guardians may dispute the amount of actual expenses reimbursed or the denial of reimbursement by filing a petition with DOAH.<sup>25</sup>

### Intermittent Benefits

The Plan may also provide:

- Periodic payments or a lump sum cash award as determined by the ALJ to the infant's parents or guardians, not to exceed \$250,000.<sup>26</sup>
- A \$50,000 death benefit for the infant.
- Compensation for reasonable expenses incurred for filing the claim, including attorney's fees.<sup>27</sup>

Current law requires the Plan to immediately pay expenses previously incurred at the time the ALJ awards compensation, and future expenses as they are incurred.<sup>28</sup>

In 2025, NICA incurred \$143,129,789 in claims; in 2024, NICA incurred \$189,722,125 in claims.<sup>29</sup>

### Medicaid Third-Party Payer Liability

The Plan does not reimburse or pay expenses that might otherwise be covered by insurance or any private or governmental programs, unless such exclusion is prohibited by federal law.<sup>30</sup> Many children with birth-related injuries are either covered by programs such as Children's Medical Services or Medicaid. Under current state and federal law, Medicaid is the payor of last resort for medically necessary goods and services furnished to Medicaid recipients; therefore, current law prohibits NICA from shifting covered costs onto Medicaid.<sup>31</sup>

In 2022, NICA entered into a settlement agreement with the United States to resolve a lawsuit<sup>32</sup> which alleged that NICA held itself out as the payer of last resort for Plan expenses and submitted false reimbursement claims to

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<sup>22</sup> [S. 766.31\(1\)\(a\), F.S.](#)

<sup>23</sup> [S. 766.31\(1\)\(a\), F.S.](#)

<sup>24</sup> [S. 766.31\(1\)\(a\), F.S.](#)

<sup>25</sup> [S. 766.31\(1\)\(c\), F.S.](#)

<sup>26</sup> This one-time award is in addition to the other recoverable lifetime expenses. Each January 1st, the award cap authorized in current law will increase by 3 percent. As of January 1, 2026, this one-time cash award cap is \$289,818.51.

<sup>27</sup> [S. 766.31\(1\)\(d\), F.S.](#)

<sup>28</sup> [S. 766.31\(2\), F.S.](#)

<sup>29</sup> THF Certified Public Accountants, *Florida Birth-Related Neurological Injury Compensation Association: Years ended June 30, 2025 and 2024 with Report of Independent Auditors*, at 6 (Sept. 9, 2025) <https://nica.com/wp-content/uploads/2025/09/Audited-Financial-Statements-06-30-2025.pdf> (last visited Jan. 9, 2026).

<sup>30</sup> [S. 766.31\(1\)\(b\), F.S.](#)

<sup>31</sup> [S. 409.910, F.S.](#) (which may be cited as the "Medicaid Third-Party Liability Act"); 42 C.F.R. § 433.136; 42 U.S.C. § 1396a.

<sup>32</sup> *U.S. ex. rel. Arven v. The Florida Birth-Related Neurological Injury Compensation Association, et al.*, No. 0:19-cv-61053 (S.D. Fla. 2019) and No. 20-13448 (11th Cir. 2022).

Medicaid in violation of the federal False Claims Act.<sup>33</sup> The settlement agreement declares that it does not constitute an admission of liability by NICA nor a concession by the United States that its claims are not well founded.<sup>34</sup> NICA paid \$51 million plus interest to the federal government to settle the suit.<sup>35</sup>

In July 2025, AHCA and NICA formalized an interagency agreement to coordinate payment for Medicaid services for individuals dually enrolled in Medicaid and the Plan, with the Plan being the primary payor for services rendered. NICA reimburses AHCA for managed care capitation rate payments and fee-for-service payments made. AHCA is currently seeking an average of \$11.5 million for state fiscal years 2022-2023 through 2024-2025 in reimbursable expenses from NICA.<sup>36</sup>

### Financial Soundness of NICA

#### Provider Assessments

Provider assessments primarily finance the Plan, and the Legislature may appropriate additional funds to Plan.<sup>37</sup> NICA holds assessment deposits and must use all funds and income collected solely for making benefit disbursements under the Plan and for reasonable administrative expenses.<sup>38</sup> Currently, the Plan is funded by assessments from hospitals and physicians. In 2025, NICA collected \$38,012,647 in hospital and physician assessments; in 2024, NICA collected \$37,945,268.<sup>39</sup>

#### *Hospitals*

Each hospital licensed under Chapter 395 must pay an annual assessment of \$50 per infant delivered during the previous calendar year.<sup>40</sup> However, infants born to a charity patient<sup>41</sup> or to a patient for whom the hospital receives Medicaid reimbursement must not be included in the annual assessment, provided that the sum of the annual charges for charity patients plus Medicaid patients exceeds 10 percent of the hospital's total annual gross operating revenues.<sup>42</sup>

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<sup>33</sup> The federal False Claims Act allows the federal government to pursue perpetrators of fraud against government programs, including its authorization of private citizens to file civil suits on behalf of the United States. Successful litigants receive a portion of the government's recovery. Civil Division, "The False Claims Act," *U.S. Department of Justice* (updated Jan. 15, 2025) <https://www.justice.gov/civil/false-claims-act> (last visited Jan. 9, 2026). *See* 31 U.S.C. §§ 3729-3733.

<sup>34</sup> *U.S. ex. rel. Arven* *supra* note 32, at 4 (available at <https://nica.com/reports/medicaid-settlement/>) (last visited Jan. 9, 2026).

<sup>35</sup> *Id.*

<sup>36</sup> Agency for Health Care Administration, *Agency Bill Analysis for HB 1291* (2026), at 2 (Jan. 13, 2026) <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=37304> (last visited Jan. 21, 2026).

<sup>37</sup> [S. 766.314\(1\), F.S.](#), [s. 766.314\(2\), F.S.](#)

<sup>38</sup> [S. 766.314\(3\), F.S.](#)

<sup>39</sup> THF Certified Public Accountants, *supra* note 29, at 6.

<sup>40</sup> [S. 766.314\(5\)\(a\), F.S.](#)

<sup>41</sup> AHCA rule defines a charity care patient as a medically indigent patient whose charges are, in whole or in part, classified according to the Florida Hospital Uniform Reporting System Manual. Rule 59E-5.101(3), F.A.C. *See* [s. 766.314\(4\)\(a\), F.S.](#)

<sup>42</sup> [S. 766.314\(4\)\(a\), F.S.](#) Current law makes the hospital responsible for documenting, to NICA's satisfaction, the exclusion of any birth from the computation of the assessment. Upon demonstration of financial need by a hospital, current law authorizes NICA to provide for installment payments of assessments.

## *Participating Physicians*

A participating physician under the Plan is a licensed Florida physician who either practices obstetrics or performs obstetrical services on a full or part-time basis<sup>43</sup> and pays an annual assessment<sup>44</sup> of \$5,000 for coverage running January 1<sup>st</sup> through December 31<sup>st</sup>.<sup>45</sup> Participating physicians are bound by DOAH rulings, or any appeals of DOAH rulings, with respect to whether a birth-related neurological injury occurred.<sup>46</sup>

If the physician did not pay his or her assessment for the year in which the injury occurred, there is no NICA coverage. Hospitals that allow doctors who do not participate in NICA to deliver babies are subject to multi-million-dollar catastrophic injury lawsuits.<sup>47</sup>

## *Other Physicians*

Current law requires all licensed allopathic or osteopathic physicians, regardless of medical specialty, to pay an annual assessment of \$250. This means obstetricians who decline to pay the \$5,000 annual assessment for NICA coverage must still pay the \$250 assessment.<sup>48</sup>

## Plan Assets and Liabilities

Current law declares that Plan funds are funds of the State of Florida.<sup>49</sup> Current law requires each person authorized to receive deposits, issue vouchers, or withdraw or otherwise disburse any funds to post a fidelity bond in an amount reasonably sufficient to protect Plan assets.<sup>50</sup> Current law requires the cost of fidelity bonds to be paid from Plan assets.<sup>51</sup>

Current law authorizes NICA to only invest Plan funds in the investment and securities described in [s. 215.47, F.S.](#) Investment income are Plan funds. NICA may approve a trust agreement with the State Board of Administration (SBA), where the SBA may invest and reinvest Plan funds within the provisions of s. 215.44-215.53.<sup>52</sup>

As of June 30, 2025, NICA's total assets increased by 8.08%, primarily due to an increase in investments, from approximately \$1.4 billion to more than \$1.5 billion. However, NICA's total liabilities remain greater than its total

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<sup>43</sup> The term "participating physician" does not apply to any physician who practices medicine as an officer, employee, or agent of the federal government. [s. 766.302\(7\), F.S.](#)

<sup>44</sup> Current law exempts certain "participating physicians" from paying the annual assessment, including:

- A resident physician, assistant resident physician, or intern in an approved postgraduate training program, as defined by the Board of Medicine or the Board of Osteopathic Medicine by rule;
- A retired physician who maintains an active license with the Department of Health;
- A physician who holds a limited license pursuant to s. 458.317 and who is not being compensated for medical services;
- A physician employed full-time by the U.S. Department of Veterans Affairs (VA) and whose practice is confined to VA hospitals;
- A physician in the U.S. Armed Forces and who meets the requirements of s. 456.024;
- A physician employed full-time by the State of Florida and whose practice is confined to state-owned facilities; and
- A physician employed full-time by the Department of Health. [766.314\(4\)\(b\), F.S.](#)

<sup>45</sup> See [s. 766.314\(5\)\(a\), F.S.](#), [s. 766.314\(7\)\(a\), F.S.](#), [s. 766.302\(7\), F.S.](#) Current law requires the Office of Insurance Regulation to establish the rate of contribution for participating physicians for each tax year. s. 766.314(7)(a). If NICA receives the assessment after January 31 of any calendar year, the physician shall qualify as a participating physician for that calendar year only from the date the payment was received by the association. [s. 766.314\(5\)\(a\), F.S.](#)

<sup>46</sup> [s. 766.309\(3\), F.S.](#)

<sup>47</sup> Brad Blystone, *A Statutory Primer: Birth-Related Neurological Injury Compensation Act*, Florida Medical Business (March/April 2012), <https://marshalldennehey.com/sites/default/files/pdf-articles/0%2020243%20by%20B.%20Blystone%20%2803 04.12%29.pdf> (last visited Jan. 28, 2026).

<sup>48</sup> [s. 766.314\(4\)\(b\), F.S.](#), [s. 766.314\(5\)\(a\), F.S.](#)

<sup>49</sup> [s. 766.315\(5\)\(f\), F.S.](#)

<sup>50</sup> Current law prohibits withdrawals of funds from the Plan unless NICA authorizes a withdrawal voucher. [s. 766.315\(5\)\(a\), F.S.](#)

<sup>51</sup> [s. 766.315\(5\)\(d\), F.S.](#)

<sup>52</sup> [s. 766.315\(5\)\(f\), F.S.](#)

assets; NICA's total liabilities amount to \$1.7 billion for 2025, which increased by almost \$100 million from 2024 levels.

This means NICA has a deficit net position of approximately \$189.3 million. Notwithstanding this figure, NICA's deficit net position is an improvement from June 30, 2024, where NICA's deficit net position was about \$216.6 million. This indicates that, for the moment, the growth in total assets currently exceeds the growth of total liabilities, which was 5.31% year-over-year. The independent auditors of NICA's financial statements attribute the increase in total liabilities to an increase in claim reserves.<sup>53</sup>

The independent auditors' report also notes that the five-year change in average claim size for an open active claim increased from \$3.68 million (June 30, 2020) to \$5.42 million (June 30, 2025). The average number of open claims increased from 225 to 261. During this same five-year period, NICA's overall claims reserve liability increased by \$660.5 million while the annual revenues from assessments only increased by \$10.2 million.<sup>54</sup>

### *Claims Management*

Current law requires NICA to estimate the present value of a new claim's total cost within 60 days after a claimant files a claim for a birth-related neurological injury.<sup>55</sup> NICA must revise its initial estimate for a claim each quarter based upon the actual costs incurred and any additional information that becomes available to the association since the last review of such estimate, deducting amounts paid by NICA towards the claim balance.<sup>56</sup>

In the event the total liability of all claim estimates equals or exceeds 100% of the Plan's cash flow, which includes cash-on-hand and all provider assessments received during the next 12-month period, current law prohibits NICA from accepting any new claims for birth-related neurological injuries without express legislative authorization.<sup>57</sup> If this freeze on new claims occurs, NICA must notify the Governor, the Speaker of the House of Representatives, the President of the Senate, OIR, AHCA, and the Department of Health of the claims freeze within the first 30 days.<sup>58</sup>

NICA's quarterly calculation at September 2023 revealed that NICA came within \$2 million of breaching the liability-to-cash-flow threshold. The Plan's ratio of assets to liabilities was about 89%, which NICA attributes to a significant loss in market value due to aggressive interest rate hikes by the Federal Reserve in response to inflation during the preceding 17 months.<sup>59</sup>

If the claims freeze precludes a prospective plaintiff from asserting a claim for a birth-related neurological injury against NICA, current law waives his or her requirement to exhaust all administrative remedies with DOAH and NICA before pursuing medical malpractice litigation.<sup>60</sup>

### *Actuarial Soundness*

Current law requires NICA to inform the Legislature of its determination as to the annual cost of maintaining the Plan on an actuarially sound basis.<sup>61</sup> Current law also requires OIR to conduct an actuarial valuation of the Plan's

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<sup>53</sup> THF Certified Public Accountants, *supra* note 29 at 5.

<sup>54</sup> THF Certified Public Accountants, *supra* note 29 at 25.

<sup>55</sup> The total cost analysis includes the estimated amount to be paid to the claimant, the claimant's attorney, the attorney's fees of the association incident to the claim, and any other expenses that are reasonably anticipated to be incurred by the association in connection with the adjudication and payment of the claim. NICA factors in the maximum benefits for noneconomic damages. [S. 766.314\(9\)\(a\), F.S.](#)

<sup>56</sup> [S. 766.314\(9\)\(b\), F.S.](#)

<sup>57</sup> [S. 766.314\(9\)\(c\), F.S.](#) Notwithstanding this suspension, current law authorizes NICA to accept new claims as long as the birth-related neurological injury occurred at least 18 months prior to the effective date of the suspension. NICA may also accept all new claims during the 2025-2026 fiscal year if the total of all current estimates exceeds prescribed limits.

<sup>58</sup> [S. 766.314\(9\)\(c\), F.S.](#)

<sup>59</sup> Florida Birth-Related Neurological Injury Compensation Association, *supra* note 9, at 14, January 8, 2026.

<sup>60</sup> [S. 766.314\(9\)\(d\), F.S.](#)

<sup>61</sup> [S. 766.314\(8\), F.S.](#)

assets and liabilities on a biennial basis.<sup>62</sup> Should a time come when these funds prove insufficient to keep the Plan actuarially sound, current law authorizes OIR to transfer another \$20 million from the Insurance Regulatory Trust Fund to the Plan.<sup>63</sup>

In the event the additional \$20 million transfer is insufficient to bring the Plan back to actuarial soundness, current law authorizes OIR to levy an annual assessment on licensed casualty insurance carriers, not to exceed 0.25% of its net direct premiums written individually.<sup>64</sup> If OIR finds that NICA cannot maintain the Plan on an actuarially sound basis, current law requires OIR to increase provider assessments on a proportional basis.<sup>65</sup>

In 2024, the Legislature required NICA, in consultation with OIR and AHCA, to provide a report by September 1, 2024, to the Governor, CFO, President of the Senate, and the Speaker of the House of Representatives that recommends how to define actuarial soundness for NICA, how to structure a reporting obligation timeline for actuarial soundness updates, and how to ensure a sufficient revenue level for NICA to maintain actuarial soundness.<sup>66</sup> Pursuant to this directive, NICA recommends that:

- the funding ratio of assets-to-liabilities should be used as a point-in-time measure of actuarial soundness and as a key indicator for revenue increases;
- actuarial soundness accounts for net cash flow;
- NICA posts funding ratios for each quarter on its website to document adherence to reporting timelines;
- NICA requests any increase in provider assessments as a percentage of the reserve requirement in relation to the funding ratio, subject to OIR approval; and
- the casualty insurer assessment becomes the last option for additional Plan revenue.<sup>67</sup>

#### RECENT LEGISLATION:

YEAR	BILL #/SUBJECT	HOUSE/SENATE SPONSOR(S)	OTHER INFORMATION
2025	<a href="#">SB 2502</a> - Implementing the 2025-2026 General Appropriations Act	McClure/ Hooper	Became law on July 1, 2025.
2024	<a href="#">CS/CS/HB 1611</a> - Insurance	Stevenson/ Trumbull	Became law on July 1, 2024.
2024	<a href="#">CS/CS/CS/HB 989</a> - Chief Financial Officer	LaMarca/ DiCeglie	Became law on May 2, 2024.
2021	<a href="#">CS/CS/SB 1786</a> - Florida Birth-Related Neurological Injury Compensation Plan	Koster/ Book	Became law on June 21, 2021.

#### OTHER RESOURCES:

[2025 NICA Actuarial Report \(June 30, 2025\)](#)

[2025 NICA Audited Financial Statements \(September 2025\)](#)

[Agency for Health Care Administration Report on NICA as Third-Party Benefit Payer \(November 2021\)](#)

[Auditor General Operational Audit of NICA \(October 2023\)](#)

[Medicaid Settlement Agreement \(December 2022\)](#)

<sup>62</sup> [S. 766.314\(7\), F.S.](#)

<sup>63</sup> [S. 766.314\(5\)\(b\), F.S.](#)

<sup>64</sup> [S. 766.314\(5\), F.S.](#) Casualty insurance carriers may recover their initial and annual assessments through a surcharge on future policies, a rate increase applicable prospectively, or a combination of the two.

<sup>65</sup> [S. 766.314\(7\), F.S.](#)

<sup>66</sup> Ch. 2024-182, Laws of Fla.

<sup>67</sup> Florida Birth-Related Neurological Injury Compensation Association, *Report on Actuarial Soundness: September 2024*, at 3 (Sept. 2024)

<https://nica.com/wp-content/uploads/2025/06/NICA-Report-on-Actuarial-Soundness-%E2%80%93-September-2024-Final.pdf> (last visited Jan. 11, 2026).

[NICA Report on Actuarial Soundness \(September 2024\)](#)[Legislatively Mandated Report \(January 2026\)](#)[U.S. ex. rel. Arven v. Florida Birth-Related Neurological Injury Compensation Association, 2020 WL 5540367 \(S.D. Fla. September 8, 2020\)](#)[U.S. ex. rel. Arven v. Florida Birth-Related Neurological Injury Compensation Association, 2022 WL 1180142 \(11th Cir. April 22, 2022\)](#)**BILL HISTORY**

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
<a href="#">Insurance &amp; Banking</a> <a href="#">Subcommittee</a>	17 Y, 0 N	1/29/2026	Brackett	Miguez
<a href="#">State Administration Budget</a> <a href="#">Subcommittee</a>				
<a href="#">Commerce Committee</a>				