

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 1668

INTRODUCER: Rules Committee; Appropriations Committee on Agriculture, Environment, and General Government; and Senator Burton

SUBJECT: Florida Birth-Related Neurological Injury Compensation Association

DATE: March 4, 2026 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Favorable</u>
2.	<u>Sanders</u>	<u>Betta</u>	<u>AEG</u>	<u>Fav/CS</u>
3.	<u>Johnson</u>	<u>Kruse</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1668 revises provisions relating to the Florida Birth-Related Neurological Injury Compensation Association (NICA). In 1988, the Legislature created the Florida Birth-Related Neurological Injury Compensation plan¹ (plan) to provide compensation, long-term medical care, and other services to participants with birth-related neurological injuries.² If an infant suffers such an injury, and the physician participates in the NICA and delivers obstetrical services in connection with the birth, then an administrative award for a compensable injury is the individual's sole and exclusive remedy for the injury, with exceptions.³ Although the benefits paid under the plan are limited, the plan does not require the claimant to prove malpractice and provides a streamlined administrative hearing process to resolve the claim.⁴ The primary, initial funding for the plan is provided through assessments on physicians and hospitals with exceptions.

¹ Section 766.303(1), F.S.

² Chapter 88-1, Laws of Fla.

³ Section 766.31(1), F.S.

⁴ See *Florida Birth-Related Neurological Injury Compensation Ass'n v. McKaughan*, 668 So.2d 974, 977 (Fla. 1996).

The bill:

- Codifies the agreement between NICA and the Agency for Health Care Administration (AHCA), which provides that NICA is responsible for reimbursing Medicaid for fee-for-service claims since Medicaid is the payor of last resort.
- Prohibits the board of directors from adding new benefits or expanding existing benefits if NICA is incurring cash flow deficits as documented in the most recent annual audited financials. This provision does not prohibit the plan from providing benefits set forth in s. 766.31.
- Authorizes NICA to pay for health insurance premiums and cost sharing expenses for participants and requires participants to have health coverage through the commercial market or Medicaid, if applicable. Health insurance coverage for a participant must be obtained within a specified amount of time after an administrative law judge (ALJ) enters a final order approving a claim for compensation. Coverage for a plan participant, as of June 30, 2026, must be obtained by January 1, 2027.
- Requires NICA to submit a plan of operation (plan), and any amendments thereto, for review and approval to the OIR. The bill requires the plan to include a fraud and overpayment prevention and detection program.

The bill also:

- The bill creates definitions for the terms, “actuarial soundness,” “risk margin,” “office,” and “participant.”
- Updates the statutory provisions to replace the term, “child” with “participant.”
- Requires family members to maintain comprehensive major medical health insurance coverage for a NICA participant or the participant must be covered by Medicaid.
- Specifies that NICA benefits include:
 - The costs of major medical health coverage for the participant, including the premium and out-of-pocket costs.
 - Dental services.
 - Legal costs associated with establishing and maintaining guardianship for a participant.
- Provides that, as a part of its annual report, NICA, may include recommendations to expand existing benefits or create existing benefits, as well as the estimated costs of such benefits, and the amount of compensation paid to independent contractors within its annual report.

The effective date of the bill is upon becoming a law.

II. Present Situation:

In 1988, the Legislature created the Florida Birth-Related Neurological Injury Compensation Association (NICA) to provide exclusive remedy, irrespective of fault, for infants who have sustained a birth-related neurological injury.⁵ A “birth-related neurological injury” is an injury to the brain or spinal cord of a live infant who weighs at least 2,500 grams for a single gestation or, in the case of a multiple gestation, a live infant who weighs at least 2,000 grams at birth caused by oxygen deprivation or by mechanical injury occurring in the course of labor, delivery, or resuscitation in the immediate post-delivery period in a hospital.⁶ Such an injury addressed by

⁵ Section 766.301, F.S.

⁶ Section 766.302(2), F.S.

this statute renders the infant permanently and substantially mentally and physically impaired.⁷ As of June 30, 2025, there were 253 NICA participants receiving ongoing benefits through the Florida Birth-Related Neurological Injury Compensation plan (plan).⁸

The NICA is governed by a board of directors appointed by the Chief Financial Officer.⁹ Board meetings are subject to public meetings and record requirements of s. 286.011, F.S.¹⁰

Filing a Claim for Benefits

A claim for compensation under the plan must be filed within five years of the birth of an infant alleged to be injured.¹¹ First, the parents or guardians of the infant must file a petition with the Division of Administrative Hearings (DOAH).¹² Then, the DOAH serves a copy of the petition upon the NICA, the physician and hospital named in the petition, the Division of Medical Quality Assurance of the Department of Health, and the Agency for Health Care Administration (agency or AHCA).¹³ Within 10 days of filing the petition, the parents or guardian must provide to the NICA all medical records, assessments, evaluations and prognoses, documentation of expenses, and documentation of any private or governmental source of services, or reimbursement relative to the impairments.¹⁴

Within 45 days from the date of service of a complete claim, the NICA must file a response to the petition and submit relevant written information relating to the issue of whether the injury alleged is a birth-related neurological injury.¹⁵ An administrative law judge (ALJ) at DOAH will set a hearing on the claim, to be conducted 60-120 days from the petition filing date.¹⁶

The issue of whether the claim for compensation is covered by the plan is determined exclusively in an administrative proceeding.¹⁷ The ALJ presiding over the hearing makes the following determinations:

- Whether the injury claimed is a birth-related neurological injury;
- Whether obstetrical services were delivered by a participating physician;
- How much compensation, if any, is awardable under s. 766.31, F.S.; and
- Whether, if raised by the claimant or other party, the factual determination regarding the notice requirement in s. 766.316, F.S.¹⁸

⁷ *Id.*

⁸ Florida Birth-Related Neurological Injury Compensation Association (NICA), *Report of the Florida Birth-Related Neurological Injury Compensation Association to the Governor, Legislature, and Chief Financial Officer* (Nov. 2025) <https://nica.com/wp-content/uploads/2025/10/2025-Legislatively-Mandated-Report-Nov.pdf> (last visited Feb. 19, 2026).

⁹ Section 766.315(1), F.S.

¹⁰ Section 766.315(5), F.S.

¹¹ Section 766.313, F.S.

¹² Section 766.305, F.S.

¹³ Section 766.305(2), F.S.

¹⁴ Section 766.305(3), F.S.

¹⁵ Section 766.305(4), F.S.

¹⁶ Section 766.307(1), F.S.

¹⁷ Sections 766.301(1)(d) and 766.304, F.S.

¹⁸ Section 766.309(1), F.S.

No civil action may be brought until the determinations delineated above have been made by the ALJ.¹⁹ An award may not be made under ss. 766.301-766.316, F.S., if the claimant recovers under a settlement or final judgement is entered in a civil action.²⁰

If the ALJ determines that an injury meets the definition of a birth-related neurological injury, compensation from the plan is the exclusive legal remedy against any person or entity directly involved with the labor, delivery, or immediate postdelivery resuscitation during which such injury occurs, arising out of or related to a medical negligence claim with respect to such injury.²¹ If the ALJ determines that a claim is compensable under the plan, then no civil action for the covered injury may be brought or continued in violation of the exclusiveness of remedy provisions.²² If the ALJ determines that, the injury alleged is not a birth-related neurological injury or that a participating physician did not deliver the obstetrical services, the ALJ will enter an order to that effect.²³ If a claim is not eligible under NICA, representatives of the injured infant may pursue any and all civil remedies available under common law and statutory law,³ like any other medical malpractice claim.²⁴ The ALJ may also bifurcate the proceeding and address compensability and notice first,²⁵ and address an award, if any, in a separate proceeding.²⁶ If any party chooses to appeal the ALJ's order under s. 766.309, F.S., the appeal must be filed in the District Court of Appeal.²⁷

Recent Litigation Relating to “Direct Involvement”

In case currently pending before Third District Court of Appeals, *Mount Sinai Medical Center of Florida, Inc. v. Esposito*, the respondents allege that the respondent mother gave birth at the hospital, and that the child suffered permanent brain damage at the hospital during the delivery because the minor plaintiff baby was not removed from the plaintiff Mother's womb in under 30 minutes.²⁸ The respondents originally filed their complaint October 1, 2024, in circuit court for the Eleventh Judicial Circuit against the hospital and the hospital-employed obstetricians who had delivered the infant (Esposito I).²⁹

¹⁹ Section 766.304, F.S.

²⁰ *Id.*

²¹ Section 766.303(2), F.S., only allows a civil action in place of a claim under the plan where there is clear and convincing evidence of bad faith or malicious purpose or willful and wanton disregard of human rights, safety, or property, and suit is filed prior to and in lieu of payment of an award under the plan.

²² Section 766.304, F.S.

²³ Section 766.309(2), F.S.

²⁴ Section 766.304, F.S.

²⁵ Section 766.716, F.S. Each hospital with a participating physician on its staff and each participating physician, subject to some exceptions, must provide obstetrical patients with notice of the no-fault compensation plan that must include a clear and concise explanation of a patient's rights and limitations under the plan.

²⁶ Section 766.309(4), F.S.

²⁷ Section 766.311(1), F.S.

²⁸ *Mount Sinai Medical Center of Florida, Inc., d/b/a Mount Sinai Center, Gino R. Santorio, Cathy McClean, and Regina v. Luigi Esposito and Immacolata Cantalena, Petition for Writ Certiorari, District Court of Appeal, Third District, Case No. 2024-018898.*

²⁹ *Supra*, at p. 16.

On November 6, 2024, Petitioners filed motions to abate the civil action for a determination by NICA, dismiss the action, and stay discovery.³⁰ Defendants sought immunity from tort liability under s. 766.303(2), F.S. The trial court rejected the defendants' attempt to involve NICA's exclusive rights and remedies.³¹

Subsequently, on December 27, 2024, the respondents filed a companion action (Esposito II) against the hospital, and the hospital-employed obstetricians who had delivered the infant, as well as a separate companion lawsuit against the three senior hospital executives alleging a negligent failure to have and implement appropriate systems and policies. Further the respondents assert vicarious liability against the hospital for this alleged negligence of its executives, and allege that as direct and proximate result of the negligent failures and breaches of fiduciary duties of the executives, the infant suffered permanent brain damage.³²

On April 23, 2025, the defendant hospital and physicians filed a motion to abate and a motion to stay discovery in Esposito II. On September 18, 2025, the trial court denied the motion to abate.³³ The trial court held that the executives fall outside of the scope of s. 766.303(2), F.S., because it is "undisputed that these three individuals were not directly involved in the labor and delivery of this child who suffered a catastrophic brain injury."³⁴ Subsequently, the trial court granted the motion to abate in Esposito II.³⁵

The Petitioners assert that the circuit court exceeded its jurisdiction in addressing the merits of the petitioners' immunity defense, and that the trial court erroneously held that the respondents' claims are not precluded by NICA immunity.³⁶

The respondents assert in their response to the petition for writ of certiorari that since the hospital executives cannot satisfy the definition of a NICA participating physician they are unable to rely on the statute to seek immunity from tort liability.³⁷ Further, neither the individual defendants nor the vicariously liable hospital can show any direct involvement with the Mother's labor and delivery, as required to invoke NICA's exclusive remedy and tort immunity provisions.³⁸ The respondents assert that because the plaintiff's claims against the hospital and its executives do not arise out or relate to a claim for medical negligence, the defendants are not entitled to invoke NICA's exclusive rights and remedies or to seek immunity from tort liability.³⁹

³⁰ Mount Sinai Medical Center of Florida v. Esposito et al, District Court of Appeal Third District, Case No. 3D22025-2027, Respondents' Response to the Petition for Writ of Certiorari, Dec. 10, 2025.

³¹ Mount Sinai Medical Center of Florida v. Esposito, Circuit Court of the Eleventh Judicial Circuit, Miami-Dade County.

³² *Supra* at p. 16.

³³ *Supra* at p. 33.

³⁴ *Supra* at p. 20.

³⁵ *Supra* at 31 p. 4.

³⁶ *Supra* at 24.

³⁷ *Supra* at 31 at p. 23.

³⁸ *Supra* at 31 p. 33.

³⁹ *Supra* at 31 p. 45.

Benefits⁴⁰

The plan pays benefits, on behalf of a participant, including actual expenses for medically necessary and reasonable medical and hospital, habilitative and training, family residential or custodial care and service, professional residential, and custodial care and service, drugs, special equipment, facilities, and related travel. At a minimum, the statutes require the plan to pay compensation for the following actual expenses:

- Annual psychotherapeutic services benefit of up to \$10,000 for immediate family members who reside with the plan participant.
- Transportation benefits, which includes providing parents or legal guardians with a reliable method of transportation for the care of the participant or reimbursing the cost of upgrading an existing vehicle to accommodate the participant's needs when it becomes medically necessary for wheelchair transportation. The plan must replace any vans purchased by the plan every seven years or 150,000 miles, whichever comes first.
- Housing assistance of up to \$100,000 for the life of the participant, including home construction and modifications.

In addition, the plan must provide compensation for the following items:

- Periodic or lump-sum award to the parents or legal guardians, in an amount not to exceed \$250,000;⁴¹
- Death benefit in the amount of \$50,000 for the participant;⁴² and
- Reasonable expenses for filing the claim under the plan, including attorney's fees.⁴³

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 state or federal law.⁴⁴

NICA Funding

The Florida Legislature appropriated \$20 million⁴⁵ to initially fund the plan at its inception and authorized annual assessments of physicians and hospitals thereafter.⁴⁶ A participating physician is required to pay a \$5,000 fee each year for coverage on a calendar year basis.⁴⁷ All licensed Florida physicians pay a mandatory fee of \$250, regardless of specialty.⁴⁸ Hospitals pay \$50 for each live birth during the previous calendar year. Certain exemptions apply to all these categories, including resident physicians, retired physicians, government physicians, and facilities.⁴⁹ The amount of the physician and hospital assessments have remained unchanged

⁴⁰ Section 766.31, F.S.

⁴¹ Section 766.31(1)(d), F.S. This amount is increased annually by three percent.

⁴² Section 766.31(1)(d)2.a., F.S.

⁴³ Section 766.31(1)(e), F.S.

⁴⁴ Section 766.31(1)(a), F.S.

⁴⁵ Ch. 88-277, Laws of Fla.

⁴⁶ Section 766.314, F.S.

⁴⁷ *Id.*

⁴⁸ Section 766.314(4), F.S.

⁴⁹ *Id.*

since the plan's inception in 1988.⁵⁰ Section 755.314, F.S., also requires the OIR to maintain an appropriation of \$20 million in the Insurance Regulatory Trust Fund for the NICA.

Section 766.314, F.S., provide alternative funding mechanisms for the plan if the assessments collected by the NICA "are insufficient to maintain the plan on an actuarially sound basis." The first remedy is to require the OIR to transfer up to \$20 million from the Insurance Regulatory Trust Fund.⁵¹ If the appropriation and assessments do not result in the plan being maintained on an actuarially sound basis, the OIR may assess casualty insurers up to 0.25 percent of net direct premiums written in proportion to the total amount of all net direct premiums written by casualty insurers.⁵² Lastly, s. 766.314(7)(b), F.S., requires that, if the OIR finds that the plan cannot be maintained on an actuarially sound basis based on the assessments and appropriations, the OIR must increase the assessments on physicians and hospitals on a proportional basis as needed. The statutory provisions do not define the term, "actuarial soundness," and while the OIR is required to biennially produce an actuarial valuation, that valuation does not opine on the actuarial soundness of the plan.

Within 60 days after a claim is filed, the NICA must estimate the present value of the total cost of the claim, including the estimated amount to be paid to the claimant, the claimant's attorney, the attorney's fees of the NICA incident to the claim, and any other expenses that are reasonably anticipated to be incurred by the NICA in connection with the adjudication and payment of the claim.⁵³ Every quarter, the NICA must update these estimates based upon the actual costs incurred and any additional information that becomes available to the NICA since the last review of this estimate.⁵⁴ The estimate must be reduced by any amounts paid by the NICA that were included in the current estimate.

If the total of all current estimates equals or exceeds 100 percent of the funds on hand and the funds that will become available to the association within the next 12 months from all sources, including physician and provider assessments, funds from the Insurance Regulatory Trust Fund, and assessments on specified casualty insurance, the NICA may not accept any new claims without express authority from the Legislature.⁵⁵ However, this does not preclude NICA from accepting any claim if the injury occurred 18 months or more before the effective date of this enrollment suspension.⁵⁶ Notwithstanding this requirement, the NICA is authorized to accept

⁵⁰ If the assessments amounts at June 30, 1988, were adjusted for inflation, as of June 30, 2024, the assessments will increase in the following manner: participating physicians \$5,000 would be \$13,312.50; participating nurse midwives \$2,500 would be \$6,656.26; hospital assessments \$50 would be \$133.12; and nonparticipating physician assessments of \$250 would be \$665.62. See NICA Report on Actuarial Soundness (Sep. 2024) <https://www.nica.com/wp-content/uploads/2025/06/20240930-FTI-Consulting-Reserve-Evaluation.pdf> (last visited Feb. 19, 2026).

⁵¹ Section 766.314(5)(b), F.S.

⁵² Section 766.314(5)(c)1, F.S. provides that casualty insurance described in s. 624.605(b),(k), and (q) would be subject to this assessment, which would include liability insurance, malpractice insurance, and miscellaneous insurance (insurance against liability for any other kind of loss or damage to person or property, properly a subject of insurance and not within any other kind of insurance as defined in the Florida Insurance Code).

⁵³ Section 766.314(9)(a), F.S.

⁵⁴ Section 766.314(9)(b), F.S.

⁵⁵ Section 766.314(9)(c)1., F.S.

⁵⁶ *Id.*

new claims during the 2025-2026 fiscal year if the total of all current estimates exceeds the limits described above during that fiscal year.⁵⁷

Within 30 days after the effective date of this enrollment suspension, the NICA must notify the Governor, the Speaker of the House of Representatives, the President of the Senate, the Office of Insurance Regulation, the agency, and the Department of Health of this suspension.⁵⁸

Recent Financial Trends

Since its inception and until recently, the NICA has taken in more cash than it has spent, thus, there was never an issue about its actuarial soundness and none of the above remedies have ever initiated.⁵⁹ Because the NICA is operating at an annual cash flow deficit while the number of participants and associated expenses are increasing, significant cash from investment income and other income must be used to fund operating expenses.

For Fiscal Year 2023 - 2024, the NICA collected approximately \$37.9 million in annual physician and hospital assessment revenue. However, total operating expenses⁶⁰ exceeded total revenues by about \$156 million, thereby requiring the NICA to use about \$93 million in investment income and other income to fund the plan's operations.⁶¹ Subsequently, for Fiscal Year 2024 - 2025, the NICA collected \$37.5 million in hospital and physician assessments. Although total operating expenses were significantly lower due to a decrease in claims incurred for this fiscal year; total operating expenses exceeded total revenues by about \$110 million, resulting in the NICA using investment income and other income to fund operations.⁶² At June 30, 2025, and 2024, the NICA had a deficit net position of approximately \$189.3 million and \$216.6 million, respectively.⁶³ The average claim size for an open active claim increased from \$3.68 million at June 30, 2020, to \$5.42 million at June 30, 2025, and the amount of total annual claims payments increased from \$19.8 million to \$51.7 million for the same period.⁶⁴

In recent years, many factors have increased the NICA's financial obligations and expenses. For example, in 2021, the Florida Legislature substantially revised benefits and the provision of benefits in response to concerns of family members of plan participants, which increased the

⁵⁷ This provision expires July 1, 2026.

⁵⁸ Section 766.314(9)(c)1.

⁵⁹ See *supra* NICA at 7.

⁶⁰ Thomas Howell Ferguson (THF) Certified Public Accountants, *Florida Birth Related Neurological Injury Compensation Association Years ended June 30, 2024 and 2023 with Report of Independent Auditors* (Sep. 9, 2025) <https://www.nica.com/wp-content/uploads/2025/06/2024-NICA-Audited-Financial-Statements.pdf> (last visited Feb. 20, 2026). Operating expenses for Fiscal Year 2023-2024 were comprised of claims incurred (\$189.7 million) and other operating expenses (\$4.6 million). For Fiscal Year 2024-2025, operating expenses were comprised of claims incurred of about \$143 million and other operating expenses of about \$4.9 million.

⁶¹ Thomas Howell Ferguson (THF) Certified Public Accountants, *Florida Birth Related Neurological Injury Compensation Association Years ended June 30, 2025 and 2024 with Report of Independent Auditors* (Sep. 9, 2025), p. 24, <https://www.nica.com/wp-content/uploads/2025/09/Audited-Financial-Statements-06-30-2025.pdf> (last visited Feb. 19, 2026).

⁶² *Id.*

⁶³ *Id.* at p. 3.

⁶⁴ *Id.*

financial obligations of NICA.⁶⁵ Further, as the result of the Medicaid settlement,⁶⁶ NICA was required to pay approximately \$51 million to the federal government and Medicaid will no longer reimburse NICA participants for expenses, and instead the NICA will be responsible for quarterly payments.⁶⁷ Claim payments are expected to increase an additional \$12 million annually once the Medicaid reimbursement process begins.⁶⁸

Federal Medicaid Settlement and Agreement with the Agency for Health Care Administration

Medicaid Program⁶⁹

The Medicaid program provides medical assistance to certain low-income individuals and individuals with disabilities.⁷⁰ The federal government and states jointly fund and administer the Medicaid program. At the federal level, the Centers for Medicare and Medicaid Services (CMS) administers the program, and each state administers its Medicaid program according to a CMS approved State plan that establishes which services the Medicaid program will cover. Although each state has considerable flexibility in designing and operating its Medicaid program, it must comply with federal requirements. The federal government pays its share of a state's medical assistance costs under the Medicaid program based on the Federal medical assistance percentage (FMAP). In Florida, the Agency for Health Care Administration, the State Medicaid agency, is responsible for computing and reporting the federal share, which is based on the total computable amount multiplied by the FMAP.

Medicaid Third-Party Liability

Federal law requires states to take all reasonable measures to ascertain the legal liability of third parties to pay for care and services that are available under the Medicaid State plan.⁷¹ The third party liability effectuates the payor of last resort policy. Specifically, states are required to: (1) identify Medicaid enrollees' third-party health coverage, (2) determine third party liability⁷² for services, (3) avoid payment for services in most circumstances in which the state believes that a third party is liable, and (4) recover reimbursement from liable third parties after Medicaid payment if the state can reasonably expect to recover more than it paid to seek reimbursement.

⁶⁵ Ch. 2021-134, Laws of Fla.

⁶⁶ U.S. Department of Justice and NICA Settlement (Nov. 14, 2022) https://fromthegman.net/wp-content/uploads/2022/11/nica_settlement_agreement_executed_0.pdf (last visited Feb. 19, 2026).

⁶⁷ Thomas Howell Ferguson (THF) Certified Public Accountants, *Florida Birth Related Neurological Injury Compensation Association Years ended June 30, 2025 and 2024 with Report of Independent Auditors* (Sep. 9, 2025), p. 24, <https://www.nica.com/wp-content/uploads/2025/09/Audited-Financial-Statements-06-30-2025.pdf> (last visited Feb. 19, 2026).

⁶⁸ *Id.*

⁶⁹ Department of Health and Human Services, Office of Inspector General, *States face ongoing challenges in meeting third-party liability requirements for ensuring that Medicaid functions as the payer of last resort* (Oct. 2023), <https://oig.hhs.gov/documents/audit/7897/A-05-21-00013-Complete%20Report.pdf> (last visited Feb. 19, 2026).

⁷⁰ 42 U.S.C. ss. 1396-1396w-5.

⁷¹ Section 1902(a)(25) of the Social Security Act and 42 CFR part 433, subpart D. Federal regulations refer to amounts owed by non-Medicaid payers as third-party liability.

⁷² 42 CFR part 433, subpart D.

Section 409.910, F.S., the “Medicaid Third-Party Liability Act,” which governs third party liability in Florida provides that “it is the intent of the Legislature that Medicaid be the payor of last resort for medically necessary goods and services furnished to Medicaid recipients.” This provision is consistent with federal law, which provides that Medicaid pays for services only after other responsible third parties have met their burden of costs.⁷³ In “applying for or accepting medical assistance [Medicaid], an applicant, recipient, or legal representative automatically assigns to the agency any right, title, and interest such person has to any third-party benefit, excluding any Medicare benefit to the extent required to be excluded by federal law.” Section 409.910, F.S., also requires that “if benefits of a liable third party are discovered or become available after medical assistance has been provided by Medicaid, Medicaid is to be repaid in full and prior to any other person, program, or entity. Medicaid is to be repaid in full, from and to the extent of, any third-party benefits, regardless of whether a recipient is made whole or other creditors paid.”

2022 Medicaid Settlement

On November 14, 2022, the plan and NICA, its administrator, agreed to pay \$51 million to resolve allegations that they violated the False Claims Act by causing NICA participants to submit their health care claims to Medicaid rather than the NICA, in violation of Medicaid’s status as the payer of last resort under federal law.⁷⁴ The civil settlement resolves a lawsuit filed under the whistleblower provisions of the False Claims Act, which permits a private party to file a lawsuit on behalf of the United States and receive a portion of any recovery.⁷⁵ Incorporated in the settlement, the NICA represented that it would, with respect to NICA participants who also qualified for Medicaid, set aside a financial reserve, effective August 31, 2021, to pay claims it will be responsible for as the primary payor but the agency would pay while a transition plan is developed by the agency and the NICA.⁷⁶

NICA and Agency for Health Care Administration Agreement⁷⁷

The agency and the NICA entered into an agreement to coordinate payment for services for individuals who are both enrolled in NICA and Florida Medicaid participant. The purpose of the agreement is to allow participants to receive services through the Medicaid delivery system while ensuring that the NICA is the primary payor for these services. At the end of each quarter, the agency will calculate each participants’ monthly plan capitation rate payments and any fee-

⁷³ 42 U.S.C. s. 1396(a)(25). Third parties that may be liable to pay for services include private health insurance, Medicare, employer-sponsored health insurance, settlements from a liability insurer, workers' compensation, long-term care insurance, and other State and Federal programs (unless specifically excluded by Federal statute).

⁷⁴ Department of Justice, *Florida Birth-Related Neurological Injury Compensation Plan and Association to Pay \$51 Million to Resolve False Claims Act Allegations* (Nov. 14, 2022), <https://www.justice.gov/archives/opa/pr/florida-birth-related-neurological-injury-compensation-plan-and-association-pay-51-million> (last visited Feb. 19, 2026).

⁷⁵ U.S. Department of Justice, *The False Claims Act*, <https://www.justice.gov/civil/false-claims-act> (last visited Feb. 23, 2026). Private citizens who successfully file suits on behalf of the government (qui tam suits) may receive a portion of the government’s recovery. See also, 31 U.S.C. s. 3729-3733, False Claims Act.

⁷⁶ U.S. Department of Justice and NICA Settlement (Nov. 14, 2022) https://fromthegman.net/wp-content/uploads/2022/11/nica_settlement_agreement_executed_0.pdf (last visited Feb. 19, 2026). The Settlement Agreement is neither an admission of liability by the NICA nor a concession by the United States that its claims are not well founded. The NICA denies the allegations.

⁷⁷ Email from the Agency for Health Care Administration (Jan. 12, 2026) (On file with the Senate Committee on Banking and Insurance).

for-service payments made. The agency will include the sum of these payments on an invoice and submit them to the NICA. The NICA will reimburse the agency in accordance with s. 409.910, F.S., and the executed agreement.

In mid-December 2025, the AHCA submitted a retroactive invoice to the NICA for the collection of outstanding payments made by Medicaid on behalf of NICA participants. For this invoice, the AHCA identified a little over 200 NICA members enrolled in Florida Medicaid. Pursuant to the agreement, the NICA is required to provide the agency with an updated member listing each month.

Time Period	Total Fee for Service Expenditures	Total Capitation Rate Expenditures	Total Expenditures
08/31/2021- 06/30/2022	\$2,906,416.63	\$7,032,986.75	\$9,939,403.38
07/01/2022-06/30/2023	\$2,583,022.26	\$9,557,859.99	\$12,140,882.25
07/01/2023-06/30/2024	\$2,339,993.05	\$9,648,253.73	\$11,988,246.78
07/01/2024-06/30/2025	\$2,314,719.61	\$8,197,459.77	\$10,512,179.38
Total Expenditures 08/31/2021-06/30/2025 ⁷⁸			\$44,580,711.79

Office of Insurance Regulation

Florida’s Office of Insurance Regulation (OIR)⁷⁹ is responsible for the regulation of all activities of insurers and other risk-bearing entities, including licensure, rates,⁸⁰ policy forms, market conduct, claims, solvency, administrative supervision, as provided under the Florida Insurance Code (code).⁸¹ Insurance is classified into the following kinds of insurance: life, health, property, casualty, marine, and title.⁸²

III. Effect of Proposed Changes:

Section 1 amends s. 409.910, F.S., the “Medicaid Third Party Liability Act,” to authorize 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 Florida Birth-Related Neurological Injury Compensation Association (NICA) plan participants pursuant to s. 766.31, F.S. The agency and NICA entered into an agreement to coordinate payment for services for individuals who are enrolled in both NICA and Florida Medicaid. The purpose of the agreement is to allow participants to receive

⁷⁸ *Id.*

⁷⁹ The OIR is an office under the Financial Services Commission (commission), which is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. The commission is not subject to control, supervision, or direction by the Department of Financial Services in any manner, including purchasing, transactions involving real or personal property, personnel, or budgetary matters. Section 20.121(3), F.S.

⁸⁰ Pursuant to s. 627.062(1), F.S., rates may not be excessive, inadequate, or unfairly discriminatory.

⁸¹ Section 20.121(3)(a)1., F.S.

⁸² Section 624.6011, F.S.

services through the Medicaid delivery system while ensuring that NICA is the “primary payor” for these services.

Section 2 amends s. 766.302, F.S., to revise the definition of the term, “claimant,” to provide that the administrative law judge has exclusive jurisdiction to determine compensability and notice even if the claimant does not seek the NICA compensation. Definitions for the following terms are created:

- “Actuarially sound” means 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 undefined.
- “Risk margin” means 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.
- “Office” to mean the OIR.
- “Participant” means 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.

NICA adjusts claim reserves to provide for a risk margin in the event future contingent events and actual payments significantly exceed management's best estimate. The risk margin was approximately \$82 million as of June 30, 2025.⁸³

Section 3 amends s. 766.303, F.S., relating to the plan, to provide technical changes and clarify terms used. The term, “children,” as used in the context of participants of the plan is replaced with the term, “participant.”

Section 4 amends s. 766.305, F.S., relating to the filing of claims, to provide technical conforming changes.

Section 5 amends s. 766.309, F.S., to provide a technical, conforming cross reference.

Section 6 amends s. 766.31, F.S., relating to awards for birth-related injuries, to revise the types of compensation of actual expenses for medically necessary care or services an administrative law judge may award and to provide technical changes. The bill revises the types of compensation of actual expenses for medically necessary care or services an administration law judge may award. The bill provides the following changes in benefits:

- Codifies coverage of medically necessary dental services. Many participants require medically necessary sedation due to their birth injury. However, routine cleanings are not currently covered.
- Revises the current statutory benefit for psychotherapeutic services to provide access to these services for immediate family members who no longer live with the participant or do not live in Florida. The board of the NICA extended the benefit to families whose children are

⁸³ FTI Consulting, *Florida Birth Related Neurological Injury Compensation Association Analysis of Loss and LAE Reserves as of June 30, 2025* (Aug. 26, 2025), p. 44, <https://www.nica.com/wp-content/uploads/2025/09/Actuarial-Report-June-30-2025.pdf> (last visited Feb. 23, 2026).

deceased. Family members and relatives would be capped at \$10,000 annually during the participant's lifetime and up to a total of \$20,000 subsequent to the participant's death.

- 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 the 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 the 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 the NICA. If the family member disputes that an overpayment has occurred, the NICA is authorized to file a petition for division review of an overpayment for a determination of the amount, if any, to be recouped by the NICA,
- Expands the list of individuals eligible to receive an award of up to \$250,000 to include family members instead of only parents or legal guardians.

The bill requires a family member to continuously maintain comprehensive major medical health coverage for the participant.⁸⁴ 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.

The bill requires NICA to reimburse the agency 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 Medicaid services. This provision codifies the agreement between the agency and NICA. The bill provides that such funds be credited to the Health Care Administration Medical Care Trust Fund.

⁸⁴ NICA, Benefit Handbook (Dec. 12, 2024), <https://www.nica.com/wp-content/uploads/2025/06/NICA-Benefit-Handbook-1-13-25.pdf> (last visited Feb. 19, 2026). The benefit manual provides that it is the NICA's expectation that health insurance is always maintained for participants. The NICA reimburses families for the cost of the participant's health insurance. For families with Medicaid, the NICA reimburses the Agency for Health Care Administration for the cost of those premiums. For items such as therapy, equipment, and some supplies, the NICA may request documentation of an insurance denial prior to authorizing a reimbursement request. If there is a lapse in insurance coverage and expenses are incurred that would have been covered by insurance, the NICA will not reimburse for those items.

The bill requires the plan to reimburse by December 31, 2026, any participant for reasonable, medically necessary care received by the participant on or before June 30, 2026, which was reduced or not paid by the plan because the participant did not have health insurance coverage.

In the case of an alleged overpayment of an expense reimbursement by the NICA to a family member, if the family member does not agree that an overpayment has occurred, the NICA may file a petition for review of the overpayment for a determination of the amount, if any, to be recouped by the NICA.

Section 7 amends s. 766.314, F.S., relating to assessments and plan of operation, to require the NICA to submit a plan of operation and any amendments thereto to the OIR for review and approval. The bill requires the plan to include a fraud and overpayment prevention and detection program in the plan of operation that is subject to review and approval by the OIR.

Provisions relating to the assessment process are revised in the following manner:

- Requires hospital and physician assessments to be paid on or before December 31 of each year;
- Provides licensed physicians who wish to participate in the NICA shall pay an annual assessment of \$5,000 and any assessment required, if assessed. Current law provides licensed physicians pay an annual assessment of \$5,000.
- Provides payment of required assessments are due on or before December 31 of each year for qualification as a participating physician during the next calendar year. If payment of assessments is received by the NICA on or before January 31 of any calendar year, the physician shall qualify as a participating physician for the entire calendar year. If the payment is received after January 31, the physician shall qualify as a participating physician for that calendar year only from the date the payment was received by the NICA.

For the 2026-2027 fiscal year, the bill authorizes NICA 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 the NICA within the next 12 months. NICA is required to notify the Governor, the President of the Senate, the Speaker of the House of Representatives, OIR, AHCA, and the Department of Health within five days after NICA makes such determination. This provision expires July 1, 2027.

Section 8 amends s. 766.315, F.S., to substitute the one board director representative for a parent or legal guardian of an injured infant with one family member of a participant. Notwithstanding this section, the board of directors of the plan may not create new benefits or expand existing benefits that result in additional costs to the plan if the plan is operating at an annual cash flow deficit, as documented in the plan's audited financial statements for the prior fiscal year. This provision does not prohibit NICA from providing benefit set forth in s. 766.31, F.S.

The bill provides NICA must furnish audited financial reports, prepared in accordance with generally accepted auditing standards, to any plan participant upon request, to OIR and the Joint Legislative Auditing Committee. The bill requires NICA to include the amount of compensation paid to independent contractors within its annual report.

The bill revises the annual report NICA submits to the Governor and Legislature to clarify that NICA may submit recommendations relating to the creation of new benefits or the expansion of existing benefits. The bill also clarifies that compensation for independent contractors, along with compensation for NICA employees, must be published on website and disclosed in the annual report.

Section 9 provides the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill codifies benefits previously approved by the NICA board of directors, which will assist parents, other family members, and legal guardians in funding significant medical expenses and other necessary services and care of participants.

The bill codifies the settlement agreement between the Agency for Health Care Administration that allows Florida Birth-Related Neurological Injury Compensation Association (NICA) participants, if eligible, to enroll or to continue enrollment in the

Florida Medicaid program. Florida Medicaid will then have to seek reimbursement from the NICA for services previously reimbursed pursuant to the settlement agreement.⁸⁵

C. Government Sector Impact:

Pursuant to current law, in the event the Florida Birth-Related Neurological Injury Compensation Association (NICA) is determined to lack adequate cash flow, the Office of Insurance Regulation (OIR) is authorized to transfer \$20 million from the Insurance Regulatory Trust Fund to the NICA.

In the event NICA indicates the Birth-Related Neurological Injury Compensation Plan (plan) is not actuarially sound, and the OIR subsequently determines an actuarial valuation is necessary, such costs are indeterminate. The bill does not provide an appropriation for such costs.

The Agency for Health Care Administration (AHCA) indicates the bill does not impact its revenue or expenditures as the updates are specific to the NICA and do not have any operational or fiscal impact to the AHCA.⁸⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends sections 409.910, 766.302, 766.303, 766.305, 766.309, 766.31, 766.314, and 766.315 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Rules on March 3, 2026:

The CS:

- Creates definitions for the terms, “actuarially sound,” “office,” “participant,” and “risk margin,” and revises the definitions of the term, “claimant,”
- Restores current law regarding the exclusiveness of rights and remedies of the Florida Birth-Related Neurological Injury Compensation Plan that provides immunity from medical negligence claims to any person or entity *directly* involved with the labor,

⁸⁵ Agency for Health Care Administration, *2026 Agency Analysis of Senate Bill 1668* (Jan. 13, 2026) (on file with the Senate Appropriations Committee on Agriculture, Environment and General Government).

⁸⁶ Agency for Health Care Administration, *2026 Agency Analysis of Senate Bill 1668* (Jan. 13, 2026) (on file with the Senate Appropriations Committee on Agriculture, Environment and General Government).

delivery, or immediate postdelivery resuscitation during which such injury occurs. The prior version of the bill struck the word “directly”.

- Revises elements of NICA’s annual report to the Governor and Legislature to include recommendations relating to creation of new benefits or the expansion of existing benefits. Any such recommendations must include estimates of the costs of such changes to the plan on an annual basis.
- Changes the effective date of the bill from July 1, 2026, to effective upon becoming a law.

CS by Appropriations Committee on Agriculture, Environment, and General Government on February 25, 2026:

The committee substitute:

- Restores current law relating to the plan of operation for the Florida Birth-Related Neurological Injury Compensation Association (NICA) to require assessments to be on an actuarially sound basis subject to defined limits.
- Restores current law as it relates to annual assessments required to be paid into the NICA.
- Restores current law which authorizes the Office of Insurance Regulation to transfer \$20 million from the Insurance Regulatory Trust Fund to the NICA in the event it has been determined NICA lacks cash flow.
- Authorizes the NICA to accept new claims during Fiscal Year 2026 – 2027 even if the total of all current estimates of claims equals or exceeds 100 percent of the funds on hand and funds that will become available within the next 12 months. Requires the NICA to notify the Governor, the Legislature, the Office of Insurance Regulation, the Agency for Health Care Administration and the Department of Health within five days after a determination of that claims equal or exceed available funding.
- Prohibits the Board of Directors of the NICA from creating new benefits or expanding existing benefits that result in additional costs to the plan if the plan is operating at an annual cash flow deficit, as documented in the plan’s audited financial statements for the prior year.
- Requires the NICA to include the amount of compensation paid to an independent contractor within its annual report.
- Makes technical and conforming changes.

B. Amendments:

None.