



# **The Florida Birth-Related Neurological Injury Compensation Association and Florida Medicaid Third-Party Liability**

*Update Report to the Florida Legislature  
November 2023*



# **The Florida Birth-Related Neurological Injury Compensation Association (NICA) and Florida Medicaid Third-Party Liability Status Report**

During the 2021 Florida Legislative Session, the legislature passed Senate Bill (SB) 1786. This bill required the Agency for Health Care Administration (Agency) to review and provide recommendations regarding the development of policies and procedures to ensure robust implementation of Agency functions and rights relative to the primacy of the plan's third-party benefits payable under s. 766.31(1)(a)1. and 3., Florida Statutes, and recoveries due the Agency under s. 409.910, Florida Statutes. The report as required by SB 1786 was presented to the Legislature on November 1, 2021, in advance of the 2022 Legislative Session.

During the 2023 Florida legislative Session, the Florida Legislature passed SB 2500 (the General Appropriations Act for Fiscal Year 2023-2024) which contained the following requirement:

“The Agency for Health Care Administration, in consultation with the Florida Birth-Related Neurological Injury Compensation Plan, shall prepare a status report regarding Medicaid third-party liability functions to be submitted to the President of the Senate, the Speaker of the House of Representatives, and the Chief Financial Officer on or before November 1, 2023.”

In 2023, an Agency project team evaluated several options for incorporating NICA as a third-party payor ensuring that the Agency is the payor of last resort for NICA enrollees, prospectively. During this same period, the Agency met with representatives from NICA on multiple occasions to share information on requirements, operational considerations and stakeholder impact. As a result of this collaboration, in the initial phase of the Agency's options review, we set aside options that would potentially disrupt access to critical and specialized care for NICA enrollees and have focused on alternatives that would have the lowest impact on enrollees and the providers serving them today.

Ultimately, the project team devised an option to avoid disruptions of needed medical services while transitioning into a system where NICA is a primary payor.

## **Next Steps**

The Agency and NICA put forward an approach under which funds collected by NICA are used to directly fund services provided to NICA enrollees who are also Medicaid eligible. The approach would include the direction of funds collected by NICA into a newly established trust fund, which would be used to fund a specific appropriation within the Agency's budget, for the purpose of covering the cost of providing Medicaid services to NICA enrollees. In addition, the approach would include a periodic estimation of Medicaid expenditures for NICA enrollees through the regular Social Services Estimating Conference meetings, and an annual reconciliation to ensure funds provided to AHCA through the trust fund were both sufficient to cover the Medicaid costs for the population and not in excess of actual costs.

In addition, NICA would assume financial responsibility to pay for all medical services provided by the Florida Medicaid program. This would accomplish NICA's requirements under Section 766.31, Florida Statutes which requires NICA to pay for all medically necessary and reasonable expenses relative to the birth-related neurological injury over the NICA enrollees' lifetime and ensure that the provisions of Section 409.910, Florida Statutes, where Medicaid is to be the payer of last resort for medically necessary goods and services furnished to Medicaid recipients, are met. To simplify the estimating and reconciliation processes included in this approach, NICA recipients could be required to enroll in a Statewide Medicaid Managed Medical Assistance (MMA) plan. NICA would remain responsible for direct payment to providers for services/items not covered by Medicaid (relative to the birth-related neurological injury).

### **Agency Recommendation**

Under the proposed approach, the Agency makes the following recommendations for the Legislature and Chief Financial Officer to consider:

- Amending NICA's statute to:
  - Direct funds collected by NICA, equivalent to the amount annually estimated to cover the cost of Medicaid services provided to NICA enrollees, into the new trust fund.
  - Direct that NICA enrollees eligible for Medicaid shall enroll in a managed care plan under the Statewide Medicaid Managed Care program for their services.
  - Clarify that, for NICA enrollees concurrently enrolled in the Medicaid program, NICA is responsible for the cost of all services provided under the Medicaid program.
- Create a new trust fund into which NICA funds would be directed.
- Direct the Agency to include estimated cost for NICA enrollees in the Social Services Estimating Conference and conduct an annual reconciliation.

### **Potential Existing Liabilities**

The purpose of this status report is to provide an update on the Agency's efforts regarding the development of policies and procedures to ensure "robust implementation of Agency functions and rights relative to the primacy of the plan's third-party benefits." In the 2021 report, the Agency provided the extent and value of the liabilities by NICA if it is treated as a liable third-party. This Agency report does not speak to retrospective liens/claims recovery where Medicaid has made historical payments when NICA was liable nor prospective Medicaid lien/claim recoveries (the timeframe from the birth-related neurological injury to when a Department of Administrative Hearing law judge awards NICA status where Medicaid has been paying for services rendered).