



# **THE STATE OF FLORIDA**

## **OFFICE OF INSURANCE REGULATION MARKET INVESTIGATIONS**

**TARGET MARKET CONDUCT FINAL EXAMINATION REPORT**

**OF THE**

**FLORIDA BIRTH-RELATED NEUROLOGICAL INJURY  
COMPENSATION ASSOCIATION**

**February 22, 2013**

**FLORIDA COMPANY CODE: 99043**

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## **EXECUTIVE SUMMARY**

An operational review of The Florida Birth-Related Neurological Injury Compensation Association's (NICA) current systems and controls was performed and included the evaluation of processes for corporate records, accounting, complaint handling, underwriting and rating, general claims, legislative changes, and pending litigation. The following information represents general findings; specific details are found in each section of the report.

## **PURPOSE AND SCOPE OF EXAMINATION**

The Florida Office of Insurance Regulation (Office), Market Investigations, conducted a target market conduct examination of The Florida Birth-Related Neurological Injury Compensation Association (NICA or Association) pursuant to Section 624.3161, Florida Statutes. The examination was performed by Examination Resources, LLC. The scope period of this examination was January 1, 2009, through September 30, 2012. The onsite examination began January 21, 2013, and ended February 1, 2013.

The purpose of this market conduct examination was to determine the Association's compliance with Florida Statutes, the Florida Administrative Code, its filed plan of operation, and its internal operational procedures. The operational review of current systems and controls included the evaluation of processes for maintaining corporate records, general operations, accounting, general claims, investments, responsiveness to legislative changes, and pending litigation.

Information pertaining to the internal controls of the Association and its service providers was provided by Thomas Howell Ferguson, P.A., who is contracted to perform audits of the Association's annual financial statements and perform detailed testing of internal controls. The examination incorporated testing of the internal controls performed by Thomas Howell Ferguson, P.A.

Records were examined at the Association's home office located at 2360 Christopher Place, Tallahassee, Florida. Documentation utilized in this report was provided by the Association, the independent auditors, and other external sources.

The Report is based upon information obtained during the examination, additional research conducted by the Office, and additional information provided by the Association. Each finding by the Office was provided to the Association. Procedures and conduct of the examination were in accordance with the *Market Conduct Examiner's Handbook*, and the *Financial Condition Examiners Handbook* produced by the National Association of Insurance Commissioners.

## **OPERATIONS REVIEW**

### **CORPORATE RECORDS**

The Florida Birth-Related Neurological Injury Compensation Association (NICA or Association) is a state-sanctioned compensation plan (Plan) providing compensation, regardless of fault, for a limited class of catastrophic birth-related neurological injury claims. The Florida Birth-Related Neurological Injury Compensation Act (Act) was created by the Florida Legislature in 1989 pursuant to Florida Statutes, section 766.303 and Chapter 88-1, Laws of Florida. The Plan was established to address medical malpractice issues for certain birth-related neurological injury claims. The Association and Plan are collectively referred to as NICA.

The Act provides compensation and lifetime care for those covered under the Act as long as other remedies have not been awarded in separate civil action. Acceptance into the Plan is determined by an administrative law judge after a petition is filed with the Florida Division of Administrative Hearings (DOAH). NICA performs a review to determine whether a claim should be accepted. Any disputes over the determination may proceed to an administrative hearing for a final decision. The examination testing procedures included review of:

- The Plan of Operation;
- Board Meeting Minutes;
- Reports of external audits that were performed during the scope of the examination;
- NICA's Organizational Chart; and,
- Remediation efforts towards findings reported at the prior examination.

The prior examination prepared by the Office and performed as of June 30, 2004, noted two general accounting concerns.

### **Findings**

A review of present processes indicates that the Association has taken appropriate action to remediate the prior exam findings.

## **GENERAL OPERATIONS**

### **Assessments**

Physicians electing to enroll in the Plan are assessed \$5,000.00 upon enrollment and, subject to certain exclusions, pay an annual assessment of \$250.00. Certified nurse midwives, who are supervised by a participating physician, may also enroll in the Plan by paying fifty percent (or \$2,500) of the participating physician assessment.

Each hospital licensed under Chapter 395, Florida Statutes, remits an annual assessment of \$50.00 per live infant delivered at the hospital during the prior calendar year, subject to certain exclusions.

Per Section 766.314, Florida Statutes, if the Office determines the Plan cannot be maintained on an actuarially sound basis considering assessments and appropriations, the Office shall increase the assessments of members on a proportional basis. If assessments and an initial transfer from the Insurance Regulatory Trust fund are insufficient to maintain the plan on an actuarially sound basis, additional transfers may be made, of up to \$20 million dollars from the fund. If funds remain insufficient to maintain the Association on an actuarially sound basis, the Office may authorize an assessment of all insurers in Florida licensed to issue casualty insurance based on a rate of no greater than .25% of net direct premiums written.

In the event management estimates of the accumulated costs of reported claims equal 80% of current funds, plus the additional anticipated funds available within 12 months, NICA shall suspend accepting new claims without receiving express authorization from the Legislature. Injuries occurring 18 months or more prior to the effective date of the suspension shall not be precluded.

### **Findings**

NICA did not have any deficit assessments during the examination scope period.

### **Service Provider**

Claims and assessment activities are processed internally. There are no underwriting, policy issuance or policy administration activities associated with NICA. Annual assessments are made as provided in Section 766.314, Florida Statutes. Claim processing and case management<sup>1</sup> activities are performed by NICA employees. The Association engages the following services from external parties:

- Thomas Howell & Ferguson, P.A., as external auditors performing annual audits of annual financial statements;
- Turner Consulting, Inc., as external actuaries to review loss reserves;
- Susan Schuen, as investment consultant to monitor investment performance;
- Steve Ecenia of Rutledge, Ecenia and Purnell, as General Counsel;
- Advantage Payroll Service, as payroll processor;
- First Data, as on-line assessment payments processor;
- Aegis, as IT network support and maintenance provider;

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<sup>1</sup>Claimant acceptance into the NICA plan is determined by an Administrative Law Judge after the filing of a petition with the Florida Division of Administrative Hearings. Once approved, all medically necessary and reasonable expenses are covered for the life of the child.

- Randstad Technologies, as claims processing software package (CARE) maintenance and update processor; and
- Bank of New York Mellon, as investment custodian and securities lending services.

### **Findings**

No exceptions were noted related to the service providers engaged by NICA.

### **Board and Management**

The Association is directed by a five-member Board of Directors (Board) that meets quarterly to review, amend and adopt policies. Board Members, who are selected by the Chief Financial Officer of the State of Florida, serve three year terms. The Board consists of one citizen, one participating physician, one hospital, one casualty insurer and one non-participating physician.

NICA is managed by an Executive Director appointed by the Board, who is responsible for the day-to-day operations of the Association. The Executive Director reports directly to the Board and her performance is reviewed annually by the Chair.

The Association is staffed by thirteen employees, including an Executive Director. They carry out four primary internally performed operational responsibilities, including: case file management, claims processing, assessment processing, and accounting. Employees receive annual performance reviews.

### **Findings**

No exceptions were noted with the Board and management oversight.

### **ACCOUNTING**

A review and testing of accounting processes and procedures for the scope period under examination was completed. Testing included verifying:

- Trial balances aligned with the filed Annual Statement at June 30, 2012; and
- All filings, as required by the Office and the State of Florida Department of Financial Services, were completed.

The Association authorized an annual audit of its financial statements for the reporting periods ending June 30, 2012, 2011, 2010 and 2009. The CPA issued unqualified opinions for each year audited.

### **Findings**

No exceptions were noted related to accounting processes and procedures.

## **GENERAL CLAIMS REVIEW**

### **Claims Summary as of the June 30<sup>th</sup> End of Fiscal Year:**

<b>Description</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
Open/Accepted/Active Cases at Beginning of Year	110	119	128	141
Cases Ruled Compensable During the Year	15	14	19	14
Compensable Cases Closed Due to Death	(6)	(5)	(6)	(5)
Open/Accepted/Active Cases at End of Year	119	128	141	150
Claims amount Paid	\$9,715,027	\$10,990,328	\$13,713,762	\$13,169,869
Claims Amount Incurred	\$3,681,280	\$50,346,606	\$101,781,298	\$53,281,229

During the annual financial audit, external auditors Thomas Howell Ferguson, P.A., performed an internal controls assessment of the design and operating effectiveness of the controls involving the claims process. The internal control review process included:

- Reviewing the claim handling procedures manual;
- Conducting a walkthrough of the claims process and the non-claims disbursements process;
- Testing of the process controls for claims and non-claims disbursements; and
- Determining if the controls over the claim and non-claim disbursements cycles appear to be functioning as intended and are reliable.

### **Findings**

The external auditors did not identify any deficiencies impacting the effectiveness of the controls and concluded that the internal controls may be relied upon.

## **INVESTMENTS**

A detailed review of the investment processes was completed for the period under examination, the review included:

- Reviewing investment guidelines;
- Comparing investment guidelines to the plan of operation;
- Evaluating investment processes and procedures, including verifying that:
  - The Board of Governors provides prudent oversight;
  - Investment performance is adequately reviewed;

- The Association is monitoring for compliance with Section 215.47, Florida Statutes, and with Board established allowable asset allocation ranges; and
- Commission fees are accurately calculated and recorded.
- Reviewing CPA cash and investments work papers; and
- Verifying accuracy of investments reported.

The Plan of Operations specifies that the Board shall have the duty and authority to direct the investment and reinvestment of surplus funds after accounting for losses and expenses. The Board approved Investment Policy establishes the guidelines for investment activity which includes specifying investment goals, asset allocation targets and permissible ranges, permitted securities, and diversification requirements.

NICA engages the services of an investment consultant. The investment consultant provides advice on investment manager selection, monitors investment performance, and investment activity for compliance with permissible securities as specified in Section 215.47, Florida Statutes; recommends the funding/defunding of investments to align asset allocation levels to permissible ranges specified in the investment policy; presents investment results; and, makes recommendations to the Board and management. The Board authorizes investment recommendations prior to action.

The Association also engages with outside investment managers to provide advisory and management services. As defined in the investment policy, investments are to be made in accordance with securities permitted under Section 215.47, Florida Statutes. The following investment managers are currently retained by the Association:

**Investment Manager**

STERLING CAPITAL  
 BLACKROCK Ri000 G  
 LORD ABBETT  
 GOLDMAN LONG BOND  
 DELAWARE  
 NEUBERGER BERMAN H Y  
 NWILLIAM BLAIR  
 BLACKROCK PASSIVE  
 INTECH  
 QMA LARGE CAP VALUE  
 WELLINGTON  
 THOMSON HORSTMANN  
 BARINGASSETMGMT  
 TEMPLETON

**Managed Portfolio**

Core Bond  
 Core Bond  
 Core Bond  
 Long Duration Bond  
 Long Duration Bond  
 High Yield Bond  
 Equities Large Cap Growth  
 Equities Large Cap Growth  
 Equities Large Cap Value  
 Equities Large Cap Value  
 Equities Mid Cap  
 Equities Small Cap  
 International Equities  
 International Equities

Investment manager fees vary according to the respective investment agreements and are calculated as a percentage of the portfolio market value balance. NICA engages the Bank of New York Mellon for custodial services and securities lending activities. The Association also contracts with an independent third party to provide investment consultation. Management actively monitors, tests and directs asset management. The Board reviews investment activity quarterly and recently authorized retaining the professional services of Wilshire to review the investment program. External auditors performed substantive testing of investment balances at each year-end under examination. As part of their examination, cash and investments were reconciled to the trial balances. No exceptions were noted by the auditor or the examiner.

### **Findings**

Based upon a review of the investment processes and procedures, NICA appears to be adequately monitoring and recording investment activity. No exceptions were noted.

### **ADOPTION OF LEGISLATIVE CHANGES**

As part of the examination, a review of the processes and controls utilized to monitor and communicate legislative changes affecting the Association was performed.

### **Findings**

There have not been legislative provisions adopted into Florida law during the scope period of the examination directly affecting the Association. NICA demonstrated adequate processes and controls to monitor and communicate legislative changes to the Board and Management.

### **PENDING LITIGATION**

The Association is a named defendant in various proceedings arising out of the normal course of business from actions against practitioners and facilities. These proceedings are considered by NICA in estimating loss adjustment expenses and loss reserves. Management believes that resolution of these proceedings will not have a material adverse effect on the Association's financial position or the results of operations.

## **EXAMINATION FINAL REPORT SUBMISSION**

The Office hereby issues this Final Report based upon information from the examiner's draft report, additional research conducted by the Office, and additional information provided by the Association.