NICA Update 2007

The Florida Obstetric and Gynecological Society President's Task Force Report on the Florida Birth-Related Neurological Injury Compensation Association (NICA)

February 2007

NICA Background

In 1986, the Tort and Insurance Reform Act created the Academic Task Force for Review of the Insurance and Tort Systems (the "Task Force"). This panel of experts, drawn from Florida's university presidents, was tasked with evaluating Florida's insurance and tort systems and preparing a report that would recommend specific changes to be enacted by the State legislature.

The need for change was critical. Sharply rising malpractice premiums were creating an environment in which Florida's physicians were increasingly finding it difficult to provide obstetric services to expectant mothers. A lack of practicing Ob/Gyn physicians would, in turn, negatively affect the health of Florida's women and children. The Task Force responded by recommending the creation of a no-fault insurance plan to compensate plaintiffs for neurological injuries, as had been done successfully in the State of Virginia.

The Florida Legislature agreed with the recommendation and in 1988 enacted the Florida Birth-Related Neurological Injury Compensation Association Act (NICA) as Florida Statute Chapter 88-1, *Laws of Florida.* The Act addresses medical malpractice issues by setting up a no-fault plan for hospitals and doctors that covers specific birth-related neurological injuries—typically among the most costly in tort settlements. Moreover, a no-fault system limited to this type of injury would be manageable and funding levels could be statistically predicted.

The FOGS President's Task Force NICA Review

In November of 2005, the Florida Obstetric and Gynecology Society (FOGS) was asked by its membership to conduct a comprehensive review of the NICA program. The FOGS president assembled a task force in order to assess the current state of the program and make recommendations for future NICA development.

Specifically, the FOGS NICA Task Force met for three sessions in 2006, hearing expert testimony, interviewing medical reviewers and actuaries, and questioning administrative staff. The Task Force also reviewed documents and examined the current status of NICA with respect to its mission and legislative authority, its infant inclusion criteria, the adequacy of its funding, the validity of its actuarial process and reserves, and the feasibility of expanding the program to include a broader class of injuries.

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How NICA Helps

The plan offers an immediate remedy to Florida's eligible families without the need for costly litigation. During the period from January 1, 1985 through December 31, 2002, brain-damaged infants were the most expensive and prevalent condition, according to a report by the Physician Insurers Association of American (PIAA). For example, in the period reviewed, of nearly 4,000 total claims, 1,634 resulted in compensation. These included the highest settlement, and the average payout was just over $500,000. Moreover, large judgments were awarded in cases of severe disability even where strong evidence of causality was lacking.

The goal of establishing NICA is that benefits are managed professionally and quickly, removing litigation so that birth-injured infants receive needed care while the financial impact on medical providers and families is substantially reduced. This results in:

- Encouragement for physicians to practice obstetrics and provide obstetrical services.
- Stabilization of malpractice costs and provision of insurance to all physicians.
- Provision of essential care to injured children.

Who NICA Helps

Chapter 88-1, *Laws of Florida,* provides compensation and lifetime care for a specific category of "birth-related neurological injuries." These are defined as injuries to the brain or spinal cord of a live infant caused by the deprivation of oxygen or physical injury imparted during the course of labor, delivery, or resuscitation in the immediate post-delivery period in a hospital. These kinds of injuries, while uncommon, are very significant in terms of cost and system impact as they represent outliers and "uninsurable" injuries. The injury in question must cause the infant permanent and substantial mental and physical damage, and the infant at birth must weigh at least 2,500 grams (5.5 pounds) in the case of single gestation or at least 2,000 grams (4.4 pounds) in the case of multiple gestations. The Plan does not apply to genetic or congenital abnormalities, and the physician involved must be a participant in the NICA program. Barring gross misconduct on the part of the attending physician or midwife, the NICA Act is intended to provide the exclusive remedy for all such cases falling within the above classification. The benefits offered as compensation are manifold:

- Reasonable and necessary:
  - Medical care, training, residential and custodial care
  - Needed equipment or facilities
  - Pharmaceutical costs
  - Related travel expenses
- A one-time family benefit up to $100,000
- A death benefit of $10,000
- Reasonable expenses incurred in the filing of the claim, including attorney's fees

Although claimants are entitled to recover attorney's fees, an attorney is not needed to file a NICA claim. The savings realized through the reduction of attorney involvement are substantial. In tort settlements, an average of 40% of monies awarded are claimed by attorneys' fees, whereas NICA pays less than 1% of the settlement to plaintiffs' attorneys. As a result, a greater percentage of resources from the NICA plan are channeled directly to the care of the child.

How NICA Works

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 collects relevant documentation relating to the claimant's petition, conducts a

medical records review, and facilitates the medical examination of the child by a pediatric neurologist and a maternal fetal medical specialist. After these medical experts review the infant's medical records and other documentation, NICA determines whether a claim should be accepted or rejected and sends its determination to DOAH for approval. If there is any dispute over the NICA determination, then the parties may proceed to an administrative hearing. The Administrative Law Judge must issue an order of approval for an accepted claim before any payment can be made.

Once accepted by an order from the Administrative Law Judge, the child is covered for his or her lifetime, and no other compensation from a malpractice lawsuit is available.

Thus, NICA offers an exclusive compensation plan that is only available if there has not already been a settlement in a lawsuit. Instead, NICA provides lifetime benefits and care. The largest NICA expenses incurred are for nursing care. Compared with Medicaid and CMS, the NICA coverage definition is broader and provides services and equipment not otherwise available. Thus, a significant majority of covered families is very pleased with the level of care and service extended by NICA.

Determination of Eligibility

In judging a case of birth-related injury for compatibility with NICA reimbursement, three threshold issues must be met:

a. Was there an OB (oxygen deprivation or mechanical injury) incident?
b. Did the incident result in permanent and substantial mental and physical impairment?
c. Is the sentinel event during labor and delivery related to the brain/spinal cord injury?

Following the collection of records, the records are reviewd by a maternal fetal medical specialist, who investigates whether there was an occurrence of an adverse obstetrical event during labor, and delivery as well as evidence of:

Low APGAR Score
Acidotic cord blood gas
Early onset seizures
Cerebral hemorrhage
Anoxia
Hypoxia

The infant is then examined by another physician, a pediatric neurologist, who determines whether there was:

Permanent and substantial mental impairment
Permanent and substantial physical impairment

If the result of these examinations is a determination in the affirmative, the case can be forwarded for judicial review. Out of 114 hospitals reporting live births, all but 25 have had NICA claims.

NICA Funding

The basic NICA funding mechanism is supported by actuarial methodology. Every hospital in Florida except those exempt by legislative ruling pays into the fund $50 per live delivery with the exception, in some cases, of Medicaid and charity deliveries. Every licensed physician in Florida contributes $250 annually, and participating Ob/Gyn physicians pay $5,000 per year. Reserve levels are tied to life expectancy. Currently, approximately 900 physicians participate in NICA. Ob/Gyns who opt not to participate are assessed the minimum $250 per annum fee, but do not receive NICA coverage.

Status of NICA Accepted Claims

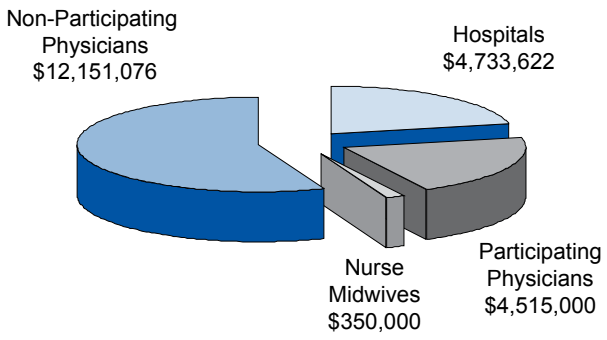
Since its establishment in 1988, NICA has received 592 claims. Of these, 211 were accepted (38%), 326 were denied (59%), and 12 claims are pending acceptance at the time of this review. While in the past most claims that were denied did not meet the statutory requirements for inclusion, a sizable number of claims were rejected as a result of administrative failures on the part of the participating physician or facility to properly notify patients of NICA participation. Significant progress has been made in this area. Of the accepted cases, 100 are currently open and active. At this level, NICA reserves are sufficient to address the patients' needs, given estimated life expectancy.

NICA Claims History	
Active cases	100
Average remaining life expectancy	34 years
Case closed due to child's death	97
Number of deaths following assignment of life expectancy	18

The Impact of Exempt Hospitals

One of the first areas examined by the Task Force was the matter of hospital exemptions from the NICA framework. Even if a hospital does not contribute to the NICA fund, birth-related injuries that fall under NICA classification for acceptance are eligible for coverage and award. It was observed that Florida's state supported teaching hospitals do not pay state taxes and are totally exempt from NICA assessment. Some private hospitals are exempt as well. For example, in the Orlando area, the Florida Hospital System is exempt from NICA assessment by legislative decree, resulting in a loss of over $400,000 in annual revenue to NICA. In total, 43% of the cost of claims incurred by NICA are a result of births in exempt hospitals.

Assessments Fiscal Year 2004–2005



By examining the total number of births in Florida in 2004 (211,705) and multiplying that number by $50, then subtracting the loss of revenue caused by hospital exemptions, the Task Force estimated that the loss to the NICA system is slightly over $5 million annually. If the only exemptions made were for births already covered by Medicaid and charity, the NICA system would still gain $3.4 million. Unlike hospitals, Ob/Gyn physicians who participate in the NICA program must pay a fixed assessment of $5,000 per year regardless of the Medicaid or charity status of their patients.

Effect of NICA on Malpractice Premiums

NICA participation keeps physician expenses down by reducing their exposure to liability. In a calculation of program impact undertaken by actuarial consultants Jerome Vogel and Robert Lindquist, which was peer-reviewed by Turner Consulting, Inc., the net effect is a savings realized by Florida Ob/Gyn physicians of approximately $49,000–$85,000 per annum in reduced malpractice premiums, depending on the non-economic cap on damages. (See Appendix 4 - Alternative Calculation.) Furthermore, Vogel and Lindquist considered the impact of NICA on the malpractice premiums of all Florida physicians, and determined the savings to be $1,477—substantially more than the $250 annual assessment they contribute. (See Appendix 5 - Savings to Non-Participants.)

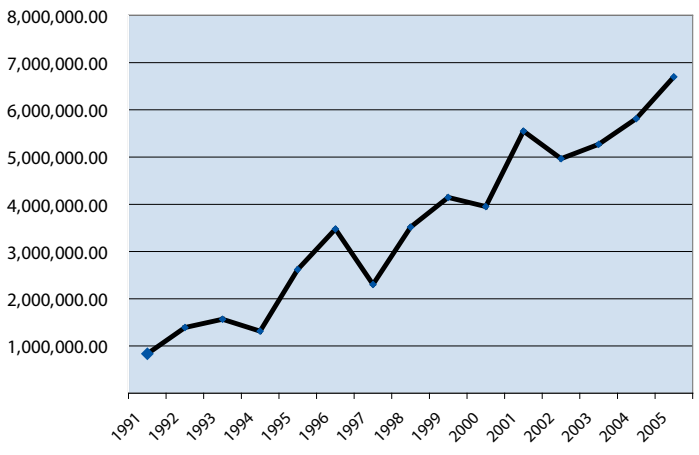
Reserves Determination

With net investments and other assets totaling $459 million, NICA's claims reserve is $364 million. The average liability per infant in various stages of the program is approximately $2 million.

With respect to life expectancy, no deaths were reported between March 23, 2003 and November 5, 2005. There have been 2 deaths in the past year. Most of the 97 deaths reported as closed cases were of infants who died prior to being accepted into the program. In those cases only family and death benefits were paid. Since the program's inception, only 18 deaths have been reported since 1988 after the reserve amount had been established.

Upon examination of case histories, the Task Force noted that life expectancy increases over time. As children age, their life expectancy moves closer to normal despite their given medical conditions. In a review of NICA's 2006 settlement negotiations, it was seen that NICA estimates of average claimant remaining life expectancy (34 years) are in line with those of other insurers, namely, Hartford Life (35 years), Massachusetts Mutual (36 years), and Allstate (32 years.).

Claims Payout by Fiscal Year



Projecting forward, estimates of current NICA funding indicate that the system could enter negative spending given the following outcomes of inflation against returns on investments:

NICA Fiscal Outlook			
Inflation	*Investments*	*NegFlow*	*NegBalance*
6%	6%	2034	2049
7%	6%	2030	2043
6%	7%	2054	Beyond

Looking at trends in claims, while the Task Force recognizes that data are incomplete for the past 5 years, initial indications suggest an increase in accepted claims. While 17 infants were accepted for birth year 2002, this number may rise to 22 or more, because claims are most often filed in the third year or later after birth. The statute allows a claim to be filed up to 5 years following the birth of the infant.

FOGS NICA Task Force Conclusions

Following a comprehensive review of the NICA operating environment and fiscal outlook, the Task Force arrived at the following conclusions:

Administration: NICA operations are conducted in a professional and efficient manner. Currently, the program makes a consistent effort to include—not exclude—potential recipients. The legal activity conducted by NICA administrators and general counsel has been geared toward clarifying admissions criteria and has led to the acceptance of more claims. Recipients are seen to be receiving excellent care and participating families are overwhelmingly satisfied with the level of service and they support the system.

Funding: The current level of NICA funding is adequate to address caseload and operations. The assessment structure, however, exempts a large number of hospitals, some for no apparent reason and appears politicized and inequitable. This is evident from the fact that 43% of NICA claim payouts stem from obstetrical deliveries occurring at totally exempt hospitals.

Reserves: The level of NICA reserves is adequate and not excessive. Multiple independent audits have concluded that the reserve determination process—including estimation of life expectancy—is appropriate and sound. NICA should, however, more frequently reevaluate its methodology for determining estimated annual expenditures and projections of life expectancy, including an independent medical examination (IME) as part of the review. Reserves are well managed and invested with excellent oversight and consultation by the NICA Finance Committee.

Inclusion Process: While the Task Force sees a trend in NICA toward accepting more claims, there is concern that some infants were previously excluded inappropriately due to a very conservative interpretation of the statutory mandated criteria for inclusion The maternal fetal medicine consultation process is satisfactory, although the consultant may be underutilized in "gray area" causation issues. The pediatric neurology consultant has heretofore been invested with an excess of responsibility, but a recent change that added a second consultant to provide initial evaluations and second opinions addresses this concern. The recently established contract with the University of Florida Pediatric Neurology Department is a very positive move as well. The Task Force notes that physicians, hospitals, lawyers and others are frequently unaware of the intervention process that is possible at NICA hearings. The intervention process is designed to allow interested parties to monitor NICA proceedings and intervene with actions and testimony at hearings if there is a disagreement with NICA inclusion recommendations. Finally, the combined effect of NICA initiatives in education, legislation, and successful defense of legal challenges have all worked to increase the number of claims accepted.

Status of NICA Mission Objective: It appears that NICA is meeting one of its primary objectives by substantially reducing physician malpractice premiums for both Ob/Gyn and non-participating physicians as evidenced by the Vogel-Lindquist report (see Appendices Four and Five). NICA contains costs that would be far higher under the tort system.

NICA Savings in Malpractice Premiums		
	Ob/Gyns	*Non-Participating Physicians*
Reduction in premiums	$55,925	$1,477
– NICA assessment	$5,000	$250
= Annual benefit	$50,925	$1,227

Reasons for Difference in Cost (Premium)		
	Tort System	*NICA*
Non-economic loss amount paid per every $2.19	$1.19	$0
Cost to adjust claims	40% of loss paid	2% of loss paid
Operating expense ratio	15.6%	2%

Expansion: The current mandated inclusion criteria are legislatively narrow, too restrictive to allow NICA to meet all of its goals, as evidenced by the 80% of participating NICA physicians who support expansion of NICA *even if* it results in a modest increase in assessments. Most physicians, for example, support expansion to include brachial plexus injury (BPI). (Note that an expansion to include BPI would increase the number of participating physicians.)

FOGS NICA Task Force Recommendations

Given that the NICA program is an example of Florida law that is working as intended, a program that is solvent and being administered effectively, the Task Force forwards the following recommendations to improve the program and help it better meet its mission:

Administration: The Task Force recommends that FOGS continue to support and assist NICA, while making no attempt to micromanage NICA administration. NICA should make use of an expert advisory panel to periodically review the inclusion process and criteria. FOGS members can assist NICA by providing counsel or serving on the NICA board, finance committee or expert advisory panel

Funding: Even though NICA is adequately funded at the present time to meet the needs of the program, no hospital should benefit from NICA unless it pays assessments to the program. FOGS, for its part, should support legislation to eliminate or modify exempt hospital status. If all hospitals pay assessments for their live births with the exception of Medicaid and charity births, the increased revenue will allow, in part, for the needed expansion of the NICA program.

Reserves: The methods employed to determine the annual cost of individual care and life expectancy should be continuously reviewed. So, too, should the individual recipients' reserve status be re-evaluated. Currently, life expectancy for children in the program is determined by the pediatric neurologist consultant. The Task Force recommends that a one-time study be conducted that compares the current method of determining life expectancy against that employed by consulting firms using large databases. Following this, an IME should be conducted every 3 years to further refine the methodology.

Inclusion Process and Criteria: NICA should consider formalizing a second opinion process when claims are denied in certain circumstances. The role of the maternal fetal medicine (MFM) consultant should be formalized and increased in causation determination (linking sentinel OB events to outcomes). In order to prevent a potential conflict of interest, it may be necessary to limit MFM and pediatric neurology consultation to physicians who do not serve as expert witnesses in malpractices lawsuits. Increased efforts are needed to educate physicians, lawyers and hospital risk-management personnel about the intervention process available at NICA hearings. Finally, as previously mentioned, an advisory panel should be formed to periodically review the NICA inclusion process.

Expansion: FOGS should immediately explore the initiation of legislative action to expand NICA to include brachial plexus injuries with the potential for permanent and substantial disability. For these children NICA should establish a fixed system of structured payouts when the extent of the injury is determined. To achieve expansion of the NICA program, legislative and administrative adjustments will be required. As examples, with an expansion as recommended the Task Force foresees a modest increase in participating physician assessment. As mentioned previously, all hospitals should be required to pay NICA assessments for all live births with the exception of Medicaid and charity births. Failing this, the hospital assessment per live birth should be increased. The task force does not recommend an increase in the $250 annual assessment for licensed Florida physicians.

Ultimately, accomplishing the Task Force recommendations will require a concerted effort on the part of all stakeholders and involve the Florida legislature, the Florida Hospital Association, and the FMA. As a response to NICA expansion, the Florida Trial Bar would most likely mount legal and constitutional challenges . Notwithstanding these difficulties, the need to protect Florida's physicians and families is of paramount importance as NICA serves a vital purpose in offering such protection.

Appendix One

Summary: FOGS NICA Task Force Conclusions (as presented in this report)

Administration

- NICA Administration is professional and efficient
- Significant efforts are being made to include, not exclude, potential recipients
- Legal activity geared toward clarifying inclusive criteria has resulted in accepting more claims
- Recipients receive excellent care
- Recipient families are pleased with the care they receive and support the system

Funding

- Funding is adequate for current operations
- The assessment structure for hospitals has been politicized and is unfair
- 43% payout of NICA claims are derived from totally exempt hospitals

Reserves

- Reserves are adequate but not excessive
- Multiple independent sources have concluded that the reserve determination process, including determination of life expectancy, is appropriate
- However, NICA does not frequently re-evaluate its methodology for determining estimated annual expenditures on recipients and life expectancy
- An IME for review is warranted
- Reserves are well managed and invested with excellent oversight and consultation

Inclusion Criteria/Process

- The trend is toward accepting more claims
- Maternal fetal medicine consultation is satisfactory
- MFM consultation may be underutilized in gray area causation issues
- Pediatric neurology consulting allowed too much responsibility to the only consultant
- No formal second opinion process was in place until recently
- The recent contract with Pediatric Neurology Dept at UF has been a positive move
- Frequently, physicians, hospitals, lawyers, etc., are unaware of the intervention process possible at NICA hearings
- NICA initiatives in education, legislative changes and successful defense of legal challenges have increased the number of claims accepted

Status of NICA Mission Objective

- NICA is substantially reducing physician malpractice premiums for both Ob/Gyn and non-participating physicians
- The program is containing costs that would be far higher under the tort system

Expansion

- The current legislatively mandated narrow inclusion criteria is too restrictive to allow NICA to meet all of its goals
- 80% of NICA participating physicians support expansion of NICA *even if it results in modest increase in assessments*
- Most support expansion to include brachial plexus injury
- An expansion to include BPI would increase the number of participating physicians

Appendix Two

Summary: FOGS NICA Task Force Recommendations (as presented in this report)

Administration

- FOGS should continue to support and assist NICA
- FOGS should make no attempt to micromanage NICA
- NICA should consider forming an expert advisory panel to periodically evaluate the inclusion process
- FOGS should continue active involvement of NICA through its advisory council, board activity, and finance committee

Funding

- NICA is adequately funded for current operations
- No hospital should benefit from NICA unless it pays assessments
- FOGS should support legislation to eliminate or modify the exempt hospital status
- All hospitals should pay assessments for all non-Medicaid/charity live births
- Increased revenue will be necessary for NICA expansion

Reserves

- Consider constant re-evaluation of the methods used in determining annual cost of individual care and life expectancy
- Re-evaluate individual recipient's reserve status annually
- Consider a one-time study to compare the current method of determining life expectancy against using life expectancy data from consulting firms using large data bases
- IME every 3 years to further refine method

Inclusion Criteria and Process

- Expand pediatric neurology consultation to include more than one physician *(now accomplished)*
- Formalize a second opinion process when a claim is denied in certain circumstances
- Increase the role of the maternal fetal medicine consult in causation determination (linking sentinel OB event to outcome)
- Consider limiting MFM and pediatric neurology consultation to physicians who do not act as expert witnesses in malpractice lawsuits
- Significantly increase efforts to educate physicians, lawyers, and hospital risk management about the intervention process at NICA hearings
- Consider forming an advisory panel to periodically monitor inclusion process

Expansion

- FOGS should immediately consider initiating legislative action to expand NICA to include brachial plexus injuries with the potential for permanent and substantial disability
- Offer a fixed structured payout between ages 1–3
- Legislative and administrative action is needed to cover the cost of expansion
- A modest increase in participating physician assessment is reasonable
- Require all hospitals to pay assessments for all non-Medicaid/charity live birth
  OR
  increase the assessment amount per live births
- *No* increase in the annual $250 assessment for all licensed Florida physicians is foreseen

Appendix Three

Major Changes in NICA Legislation

Since NICA was created in 1988, the Florida Legislature has passed legislation modifying the provisions of the plan. Key legislation affecting NICA claims are summarized below.

Laws of Florida	Key Provisions
Chapter 88-1	• Created NICA with the purpose of providing compensation, on a no-fault basis, for a specific class of birth-related injuries.
Chapter 93-251	• Reduced the statute of limitations from seven years to five years for filing a claim for compensation.
Chapter 98-113	• Granted the administrative law judge exclusive jurisdiction to determine whether a claim filed under NICA is compensable. • Prohibited civil action from being filed until this determination is made. • Required the Auditor General to conduct an analysis of the reserve adequacy and funding rates in order to determine the actuarial soundness of the Florida Birth Related Neurological Injury compensation Plan.
Chapter 2001-277	• Added coverage for cases of multiple gestation for live infants weighing at least 2,000 grams at birth. • Authorized payment for funeral expenses not to exceed $1,500.
Chapter 2002-401	• Authorized families to recover expenses for the provision of professional residential or custodial care of a severely brain-injured child in a NICA action.
Chapter 2003-258	• Expanded the definition of the term “infant delivered” for the purpose of payment of an initial assessment for each infant delivered in a hospital.
Chapter 2003-416	• Added infants who receive an award from NICA to the Children’s Medical Services (CMS) program; requires NICA to provide reimbursement to CMS for services; and makes the reimbursement eligible for federal matching funds. • Clarified that if a claimant accepts an award from NICA, no civil action may be brought. Also prohibits a claimant from receiving an award from NICA if the claimant recovers in a civil action. • Required medical records and related information in a claim to be filed with NICA, instead of DOAH, and includes these records in current public records exemption. • Limited claimant liability for expenses and attorneys’ fees. • Created a $10,000 death benefit for an infant and eliminates requirements to pay funeral expenses up to $1,500. • Authorized hospitals in a county of more than 1.1 million gross population as of January 1, 2003, to pay the NICA assessment fee for participating physicians and midwives.

Florida Birth-Related Neurological Injury Compensation Association
Florida Statutes 766.301-766.316 (1)(c)

Appendix Four

Alternative Calculation

The actuarial firm Turner Consulting was asked to estimate the savings to Florida Ob/Gyn physicians resulting from the NICA program, by considering the impact on insurance premiums were all NICA cases to be handled under a tort system framework. Turner Consulting reviewed documentation furnished by actuarial consultants Jerome Vogel, ACAS, MAAA and Robert Lindquist, ACAS, MAAA, who prepared their report based on Office of Insurance Regulation closed claims data and the DI4-308 annual report to the legislature. In a letter prepared on January 12, 2007, Turner Consulting stated that savings to physicians in terms of malpractice premiums could be reasonably assumed to approximate $55,925–$95,579 per Ob/Gyn physician, depending on the non-economic damage cap (figures expressed in estimated 2007 dollars). Applicable Turner Consulting estimates from the January 12, 2007 letter are given below.

Alternative Calculation (Assumes No Reallocation of Damages - Economic vs. Non-Economic)

	Non-Economic Cap of $500,000	Non-Economic Cap of $1,000,000	No Cap on Economic Damages
1. Annual NICA (2005 BY) losses exported to the tort system excluding all expenses and parental awards	$29,738,967	$29,738,967	
2. Estimated claim frequency at current NICA exposure levels	17.00	17.00	
3. Indicated non-economic damages - after impact of cap	8 ,500,000	17,000,000	
4. Industry average loss adjustment expense-to-loss ratio	0.3962	0.3962	
5. Industry average administrative expense to incurred loss and loss adjustment expense ratio	0.1560	0.1560	
6. At-fault claim adjustment	0.6647	0.6647	
7. Estimated loss, LAE and underwriting expense expected to transfer under tort system framework	41,021,983	50,140,609	70,108,138
8. Estimated insurance industry profit and contingency loading	7.50%	7.50%	7.50%
9. Estimated NICA (2005) cost transferred to insurance industry under tort system framework	44,348,090	54,206,064	75,792,582
10. Number of participating physicians	891	891	891
11. Indicated (2005 BY) NICA cost adjusted to tort system framework (per participating physician)	49,773	60,837	85,065
12a. Trend factor to 2007 loss & expense level (assume six percent annual trend)	1.1236	1.1236	1.1236
12b. Indicated NICA cost adjusted to 2007 level tort system framework per participating physician	55,925	68,357	95,579

Appendix Five

Savings to Non-Participants

Actuarial consultants Jerome Vogel, ACAS, MAAA and Robert Lindquist, ACAS, MAAA, were asked to estimate the annual cost of exporting NICA claims to the tort system, and calculate the increase in malpractice premiums that would result. Vogel and Lindquist prepared their report based on Office of Insurance Regulation closed claims data and the DI4-308 annual report to the legislature. In a letter prepared on November 28, 2006, for NICA executives, the actuaries provided the following table, with dollars expressed at cost assuming a current value with future investment income = future inflation:

NICA Claims in the Tort System	Annual Amount
1. Annual NICA loss exported to the tort system excluding all expenses and parental award	$29,738,967
2. Non-economic losses as ratio to loss excluding non-economic loss	1.198
3. Industry average loss adjustment expense to loss ratio	0.396
4. Industry average administrative expense to incurred loss and loss adjustment expense ratio	0.156
5. At-fault claim adjustment	0.665
6. Exported losses grossed up for loss adjustment, administrative expense and non-economic loss	$70,108,138
7. Additional tort premium for all physicians* if NICA claims were exported	$1,477

*(Compares to $250 being paid to NICA by the approximately 47,000 non-participating physicians)

Appendix Six

Impartial reviews of NICA Case Reserves

- Coopers and Lybrand 1991
- Mercer (4 actuaries) for Florida Auditor General 1999
- American Reinsurance Actuaries 1999
- Florida Office of Insurance Regulation 2002
- General Reinsurance Actuaries 2003
- Benfield Actuaries 2003, 2004, 2005
- Max Re 2004, 2005
- OPPAGA 2004
- Florida Office of Insurance Regulation 2005
- Jeanine Hart – Life Care Planning Solutions 2003
- Reinsurance Arbitration Panel—2 actuaries and an economist, all experts in medical malpractice and claims reserving

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NICA Update Report

An analysis of the current state of the NICA program prepared by the Florida Ob/Gyn Society.

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