

State-Based Birth Injury Compensation Programs: System Performance Issues

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Performance criteria

- Sensitivity
- Specificity
- Overhead costs
- Collateral effects
- Deterrence?

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Florida & Virginia birth injury funds

	Virginia's Birth-Related Neurological Injury Compensation Program (BIP)	Florida's Birth Related Neurological Injury Compensation Association (NICA)
Eligible entities	Physicians, nurse midwives, and hospitals who provide OB care to patients eligible for Medical Assistance Services	Physicians, nurse midwives, and hospitals
Fees (2007)	<ul style="list-style-type: none"> • \$5,300 per participating provider • \$280 per nonparticipating provider • \$50/birth for hospitals • \$12.7 million paid by insurers 	<ul style="list-style-type: none"> • \$5,000 per participating OB • \$2,500 per participating midwife • \$250 per nonparticipating provider • \$50/birth for hospitals • Insurers may pay up to 0.25% of premiums³

Florida & Virginia birth injury funds

	BIP	NICA
Notice provisions	Must prospectively notify patients of provider's participation. After birth, must notify parents of their rights	Must prospectively notify patients of provider's participation; notice must include a clear statement of patients' rights
Adjudicator	Workers' Compensation Commission	Administrative law judge in the Department of Management Services' Division of Administrative Hearings

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Florida & Virginia birth injury funds

	BIP	NICA
Medical experts	Claims reviewed by panel of 3 medical experts which issues a nonbinding decision regarding eligibility	Independent reviews by 2-3 medical experts
Process	<ul style="list-style-type: none"> • Petition filed • Prescreening & administrative review • Program files response • Expert panel meets • Hearing held within 120 days of filing • Appeal to full WCC and then to Court of Appeals 	<ul style="list-style-type: none"> • Petition filed • Prescreening & administrative review • Expert reports commissioned • Determination made • For disputed claims, hearing held within 120 days of filing • Judicial appeal

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Florida & Virginia birth injury funds

	BIP	NICA
Covered expenses	<ul style="list-style-type: none"> • Reasonable and necessary: <ul style="list-style-type: none"> - Medical expenses - Equipment - Pharmaceutical costs - Travel expenses • Lost earnings from age 18-65, set at 50% of state average wage earnings • Reasonable legal fees • One-time benefit up to \$100,000 for infants dying within 180 days of birth 	<ul style="list-style-type: none"> • Reasonable and necessary: <ul style="list-style-type: none"> - Medical expenses - Equipment - Pharmaceutical costs - Travel expenses • One-time family benefit up to \$100,000 • Reasonable legal fees • Death benefit of \$10,000

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Eligibility criteria in BIP and NICA

	BIP	NICA
Nature of injury	Injury to the brain or spinal cord	
Live birth	Infant must be born alive	
Minimum infant weight	None	Infant must weigh at least 2,500 grams at birth (2,000 in multiple gestation cases)
Causation	Injury must be caused by oxygen deprivation or mechanical injury	Injury must be caused by oxygen deprivation or mechanical injury

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Eligibility criteria in BIP and NICA

	BIP	NICA
Specific exclusions	Injuries caused by genetic or congenital abnormality, degenerative neurological disease, or maternal drug abuse	Injuries caused by genetic or congenital abnormality.
Timing of injury	Injury must occur in the course of labor, delivery, or resuscitation necessitated by a deprivation of oxygen or mechanical injury that occurred in the course of labor or delivery	Injury must occur in the course of labor, delivery, or resuscitation in the immediate post-delivery period

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Eligibility criteria in BIP and NICA

	BIP	NICA
Where injury occurred	In a hospital	
Nature of disability	Infant must be motorically disabled and (i) developmentally disabled or (ii) for infants sufficiently developed to be cognitively evaluated, cognitively disabled	Infant must be physically and mentally impaired
Severity of injury	Injury must render the infant permanently disabled	

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Caseload and claim outcomes

	BIP	NICA
Cases adjudicated	192	636
Cases denied	38	277
Cases accepted	134 (70%)	226 (36%)
Cases withdrawn	12	96
Cases pending	8	37
Total payments made	\$74 million	\$73.3 million
Annual expense per active admitted case	\$94,400	\$59,000

Florida data are current as of Mar. 31, 2008. Virginia data are current as of Dec. 31, 2007.

- ### Challenges applying eligibility criteria
- o Need for regular updating
 - o Causation issues
 - Linking oxygen deprivation and impairment
 - Cerebral palsy causation
 - o Establishing temporality of injury
 - Injuries that began in utero but continued through labor
 - Injuries during resuscitation
 - o Defining "substantial" and "permanent"
 - Should they be reevaluated over time?

- ### Organizational challenges
- o Defining suitable decision makers
 - o Organizing medical expert reviews
 - o Use of preliminary screening
 - o Adequacy of notice
 - o Legal adversarialism

Program outcomes


- o Shorter time to claim disposition
- o Lower overhead costs and attorney fees
- o High rates of physician participation
 - FL: >75% of OB/GYNs
 - VA: 60% of OB/GYNs
- o Reduction in high-cost OB tort claims
- o Lower premiums
- o Actuarial problems in Virginia
- o Considerable bleeding into tort in Florida₁₃

Lessons for system designers

- o Causation problems are unavoidable unless compensation is outcomes-based
- o Evidence-based decisions require continuing investments
- o Unrealized potential for incorporating decision aids

Lessons for system designers

- o Drift from founding impulses
- o Adversarialism is difficult to avoid
- o Potential financial pitfalls
- o Despite their warts, systems offer many benefits relative to tort



Performance on key criteria

- o Sensitivity and specificity: no data
- o Overhead costs: excellent
- o Collateral effects: good
- o Deterrence: no data

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