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January 15, 2003

North Carolina Senate President Pro Tempore Marc Basnight
North Carolina House of Representatives Speaker James Black
North Carolina House of Representatives Speaker Richard T. Morgan
Co-Chairs, Joint Legislative Commission on Governmental Operations

Senator Scott Thomas
Representative R. Phillip Haire
Representative Joe L. Kiser
Co-Chairs, Appropriations Subcommittees on Justice and Public Safety

North Carolina General Assembly
Raleigh, North Carolina 27601-1096

RE: G.S. §114-2.5; Report on Settlement Agreements

Gentlemen:

G.S. §114-2.5 requires the Attorney General to report to the Joint Legislative Commission on Governmental Operations and the Chairs of the Appropriations Subcommittees on Justice and Public Safety regarding all settlements and court orders which result in more than \$75,000.00 being paid to the State. Pursuant to that statute, I am writing regarding the settlement of claims for Medicaid reimbursement to the State and Federal governments.

Also pursuant to 114-2.5 and a request from the Justice and Public Safety Committee membership at our last meeting, this letter includes fiscal 2002-03 cumulative totals for the NC Department of Justice Medicaid Fraud Unit and recent recoveries by the NC Department of Justice Consumer Protection Division. The Consumer Protection settlements or judgments are detailed in the attached chart that includes, where applicable, the amount of consumer restitution, attorneys' fees, and civil penalties each case produced. In each case, the order or settlement requires that the funds be used for a cy pres distribution, consumer restitution, education or enforcement, attorneys' fees or investigative and litigation costs.

In federal fiscal year 2002-03, the Medicaid Fraud Unit achieved more criminal convictions and restitution in the history of the North Carolina Department of Justice. The Unit investigated and closed 72 cases of Medicaid fraud between October 1, 2002 and September 30, 2003. Investigations lead to 31 criminal convictions and 22 civil settlements that recovered more than \$14 million from Medicaid abusers. Pursuant to federal law (42 CRS 433.320) recoveries in these cases are shared on a pro-rata basis by the State and Federal governments.

Five new settlements have been achieved. On Dec. 31, 2003 a Settlement Agreement was executed between **Bayer Corporation** and the North Carolina Department of Justice. The State alleged that Bayer violated the federal Medicaid drug rebate statute by failing to report "best price" information and their resulting failure to pay sufficient rebates to the North Carolina Medicaid Program in connection with their private labeling of certain drugs for health maintenance organizations. The settlement covers the time period from July 1, 1995 through October 1, 2000. The United States received restitution and penalties in the amount of \$5,604,264.82. North Carolina received restitution and penalties in the total amount of \$3,753,353.32. The North Carolina Medicaid Program received restitution of \$2,032,933.86. In addition, pursuant to Article IX, Section 7 of the North Carolina Constitution and G.S. § 115C-457.1, the penalty portion of the settlement in the amount of \$1,720,419.46 will be paid to the Civil Penalty Forfeiture Fund for the support of the public schools.

In a similar case, On December 9, 2003 a Settlement Agreement was executed between SmithKline Beecham Corporation d/b/a **GlaxoSmithKline** and the North Carolina Department of Justice. The State alleged that GlaxoSmithKline violated the federal Medicaid drug rebate statute by failing to report "best price" information and their resulting failure to pay sufficient rebates to the North Carolina Medicaid Program in connection with their private labeling of certain drugs for health maintenance organizations from January 1, 1997 through October 1, 2000. The United States received restitution and penalties in the amount of \$1,850,550.81. North Carolina received restitution and penalties in the total amount of \$1,283,977.08. The North Carolina Medicaid Program received restitution of \$615,745.45. In addition, pursuant to Article IX, Section 7 of the North Carolina Constitution and G.S. § 115C-457.1, the penalty portion of the settlement in the amount of \$668,231.63 will be paid to the Civil Penalty Forfeiture Fund for the support of the public schools. In all four of these settlements a portion of the state amount will be returned to the affected counties based upon their financial participation in the Medicaid Program.

On Sept. 19, 2003 a Settlement Agreement was executed between **Intrepid of North Carolina, Inc.**, the United States Attorney's Office for the Western District of North Carolina, the United States Department of Health and Human Services, and the North Carolina Department of Justice. Intrepid (formerly Healthmate, Inc.) owns and operates home health agencies in North Carolina and provided health and nursing services for which payment was made by the Medicaid Program from February 12, 1998 through December 31, 2001. The state and federal governments alleged that Intrepid submitted claims to the Medicaid Program for services, which were not reimbursable because they were provided by family members or not properly documented. Pursuant to the Settlement Agreement, the United States received restitution and penalties in the amount of \$673,024.44 and the North Carolina Medicaid Program received restitution in the amount of \$161,975.56. The North Carolina Fund for Medical Assistance (Medicaid Program) will receive the full amount of the State share of the settlement proceeds.

On October 10, 2003 a Settlement Agreement was executed between **Abbott Laboratories** and the North Carolina Department of Justice. The state and federal governments alleged that Abbott and its subsidiary, Ross Products Division, violated the federal and state health care fraud statutes by providing unlawful remuneration and incentives in marketing enteral feeding pumps for which payment was made by the Medicaid Program from January 1992 through October 2003. The United States received restitution and penalties in the amount of \$572,630.43. North Carolina received restitution and penalties in the total amount of \$830,156.60. The North Carolina Medicaid Program received restitution of \$415,078.30. In addition, pursuant to Article IX, Section 7 of the North Carolina Constitution and G.S. § 115C-

457.1, the penalty portion of the settlement in the amount of \$415,078.30 will be paid to the Civil Penalty Forfeiture Fund for the support of the public schools.

On December 10, 2003 a Settlement Agreement was executed between Cumberland County Hospital System, Inc., d/b/a **Cape Fear Valley Home Health and Hospice**, the United States Department of Health and Human Services, and the North Carolina Department of Justice. Cumberland County Hospital System, Inc. owns and operates Cape Fear Valley Home Health and Hospice in Fayetteville, North Carolina and provided home health and hospice services for which payment was made by the Medicaid Program from October 1, 1992 through March 31, 1998. The State and Federal governments alleged that Cape Fear Home Health and Hospice submitted claims to the Medicare and Medicaid Programs for services which were not reimbursable because they were not properly documented. Pursuant to the Settlement Agreement, the United States received restitution and penalties for the Medicare, Medicaid, and TriCare Programs in the amount of \$875,575.00. North Carolina received restitution and penalties in the total amount of \$122,698.00. The North Carolina Medicaid Program received restitution in the amount of \$58,982.00. In addition, pursuant to Article IX, Section 7 of the North Carolina Constitution and G.S. §115C-457.1, the penalty portion of the settlement in the amount of \$63,716.00 will be paid to the Civil Penalty Forfeiture Fund for the support of the public schools.

We will be happy to respond to any questions you may have regarding this report. With regards, I am

Very truly yours,

Julia White
Chief of Staff

JW: mkd

cc: Chloe Gossage, NCGA Fiscal Research
Nels Roseland, DOJ Financial Services Section
Jim Johnson, NCGA Fiscal Research