JOSH STEIN
ATTORNEY GENERAL

STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE

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September 1, 2020

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North Carolina General Assembly
Raleigh, North Carolina 27601-1096

RE: G.S. §114-2.5A; Report on Activities of Medicaid Fraud Control Unit

Dear Members:

G.S. §114-2.5A requires the Attorney General to report on the activities of the Medicaid Fraud Control Unit of the Department of Justice, which is the Medicaid Investigations Division, during the previous fiscal year to the Chairs of the Appropriations Subcommittees on Justice and Public Safety and Health and Human Services of the Senate and House of Representatives and the Fiscal Research Division of the Legislative Services Office.

Pursuant to that statute, I have enclosed the Medicaid Investigations Division's Activities Report for July 1, 2019, through June 30, 2020.

We will be happy to respond to any questions you may have regarding this report.

Sincerely,

Seth Dearmin
Chief of Staff

cc: William Childs, NCGA Fiscal Research Division

REPORT TO THE
NORTH CAROLINA GENERAL ASSEMBLY

BY THE
MEDICAID INVESTIGATIONS DIVISION
OF THE
NORTH CAROLINA DEPARTMENT OF JUSTICE

State Fiscal Year July 1, 2019, through June 30, 2020

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I. INTRODUCTION

Pursuant to N.C.G.S. § 114-2.5A "each year the Medicaid Fraud Control Unit of the Department of Justice," which is the Medicaid Investigations Division (MID), "shall file a written report about its annual activities" with the General Assembly. This report covers the activities of the MID for the State Fiscal Year 2019-2020 (FY 19/20), covering the period of July 1, 2019, through June 30, 2020.

G.S. § 114-2.5A requires the report on the MID's activities during the previous state fiscal year to include specific information as follows:

(1) The number of matters reported to the MID.
(2) The number of cases investigated.
(3) The number of criminal convictions and civil settlements.
(4) The total amount of funds recovered in each case.
(5) The allocation of recovered funds in each case to (i) the federal government; (ii) the State Medical Assistance Program; (iii) the Civil Penalty and Forfeiture Fund; (iv) the N.C. Department of Justice; and (v) other victims.

Because the MID receives 75% of its funds from a Federal source, the MID is required by its Federal funding source to maintain statistics and report its activities based on the Federal fiscal year, which is October 1 through September 30. The General Assembly requires that this report present statistics based on the state fiscal year of July 1 through June 30. Pursuant to G.S. § 1-617, the General Assembly also requires a report on *qui tam* cases for the calendar year of January 1 through December 31. While these three reports overlap, the statistics presented in these three reports will vary because they each cover different time periods.

II. OVERVIEW

The MID has worked hard to combat Medicaid provider fraud, the physical abuse of patients in Medicaid funded facilities, the misappropriation of patient funds, and fraud in the administration of the Medicaid program during its 41-year history. In that time over 640 providers have been convicted of crimes relating to Medicaid provider fraud, the physical abuse of patients in Medicaid funded facilities, the misappropriation of patient personal funds, and fraud in the administration of the Medicaid program, and the MID has recovered over $905 million in fines, restitution, interest, penalties, and costs.

The MID continues to maintain strong relationships with the North Carolina Department of Health and Human Services (NC DHHS), the state agency that administers the North Carolina Medicaid Program, and with other law enforcement and prosecutorial agencies. Throughout FY 19/20, the MID continued joint investigations of fraud and patient abuse cases with a number of law enforcement and investigatory agencies, including the United States Department of Health and Human Services Office of Inspector General (HHS-OIG), Office of Investigations District Office in Greensboro, N.C.; the Federal Bureau of Investigation (FBI); the Internal Revenue Service; the United States Department of Justice; N.C. State Bureau of Investigation; and local law

enforcement agencies, along with integrity Special Investigations Units (SIUs) within private insurance companies and managed care companies. These relationships serve as a valuable resource for future case referrals.

Medicaid Fraud Control Units from other states seek advice and guidance in the areas of administration, investigation, and prosecution from the MID. The MID strives to maintain and build on this reputation and to assist other units directly and through participation with the National Association of Medicaid Fraud Control Units (NAMFCU). During FY 19/20, MID Director Eddie Kirby served as a member of the NAMFCU Executive Committee, the Global Case Committee, and a working group. MID Civil Chief Steve McCallister served on the Global Case Committee, Qui Tam Subcommittee, and several NAMFCU working groups. The MID continues to be actively involved in national global cases being coordinated through NAMFCU with the United States Department of Justice and other federal and state agencies. Civil Chief Steve McCallister and Special Deputy Attorneys General Michael Berger and Lareena Phillips, and Financial Investigator Jennifer Brock served on NAMFCU global teams appointed by NAMFCU's Global Case Committee.

The United States Attorney's Offices for the Eastern, Middle, and Western Districts have appointed a number of MID attorneys as Special Assistant United States Attorneys (SAUSA) to pursue criminal and civil Medicaid fraud matters. MID attorneys receive many benefits from this appointment. MID attorneys are collaborating with attorneys in the United States Attorney's Offices for the Western, Middle and Eastern Districts of North Carolina on substantial criminal and civil fraud cases against a variety of Medicaid providers.

The MID has a strong relationship with the North Carolina Division of Health Benefits, and particularly with its Office of Compliance and Program Integrity (OCPI). The MID also has a strong relationship with the North Carolina Division of Health Service Regulation (NC DHSR), the primary agency designated to receive patient physical abuse complaints from or involving long-term care providers in North Carolina.

During FY 19-20 the MID continued to provide an extensive training program for its staff through NAMFCU courses. Classes range from multi-level fraud investigation techniques to technical skills training.

The North Carolina General Assembly enacted the North Carolina False Claims Act, G.S. §§ 1-605 through 1-618, effective January 1, 2010. This act established a state *qui tam* law that has improved the MID's ability to prosecute and investigate Medicaid provider fraud and abuse. Since the North Carolina False Claims Act became effective, the MID has received information from and filings by whistleblowers alleging approximately 778 cases of Medicaid fraud and abuse.

During the 2017-2018 session of the North Carolina General Assembly, SB 368, "Update False Claims Act," was enacted effective June 22, 2018. This bill amended the North Carolina False Claims Act (NCFCA). On October 26, 2018 the United States Department of Health and Human Services, Office of Inspector General certified that after these recent amendments, the NCFCA is at least as effective in rewarding and facilitating *qui tam* actions for false and fraudulent

claims as those described in the federal False Claims Act. As a result, North Carolina now qualifies under the Deficit Reduction Act to receive a 10% "bump" in civil healthcare fraud recoveries. We have submitted the bill to the Inspector General and have requested that it be certified. The State now will be able to retain approximately 43 cents of every dollar recovered instead of 33 cents. This effectively results in a 30% increase in the State's recovery.

In summary, the MID's activities over the past year in both the criminal and non-criminal areas have proven productive. Our successful investigation and prosecution of a variety of Medicaid providers during FY 19/20 enhanced our reputation as an effective and professional Medicaid Fraud Control Unit that vigorously, but fairly, pursues and prosecutes fraud and abuse.

III. INFORMATION REQUIRED ON MID ACTIVITIES

1. The number of matters referred to the MID.

There were 336 referrals made to the MID during the State FY 19/20; a slight decrease from FY 18/19. The referrals came from varied sources. Referral sources include private citizens, *qui tam* relators, the Office of Compliance and Program Integrity (OCPI) of the Division of Health Benefits, Managed Care Organizations (MCO) in connection with behavioral health services, the Division of Health Service Regulation, local departments of Social Services, former employees, State Survey and Certification agencies, Licensing Boards, the National Association of Medicaid Fraud Control Units, United States Attorney's Offices, and other law enforcement agencies such as Office of Inspector General. The distribution of MID's referrals in State FY 19/20 were as follows: Anonymous (13), HHS-OIG (7), Local Prosecutors (1), Medicaid Agency Other (2), Medicaid Agency SURS or Program Integrity Unit (56), Other (19), Other Law Enforcement (7), Private Citizens (157), Provider (5), State Agency Other (11), and State Survey and Certification (58).

Of those 336 new referrals, the MID opened new case files on 136 matters. The remaining 200 were referred to another agency for review, rolled into existing MID investigations, or declined for various reasons. In many instances, it is appropriate to refer a matter to the North Carolina Division of Health Benefits for further review or administrative action. DHB can compare the allegation to its history of the provider and conduct billing analysis and reviews to determine whether further investigation is appropriate. DHB may then refer the matter back to the MID with the additional data and analysis. In that case, the MID can reconsider whether to open an investigation. Alternatively, DHB may decide to apply one of the administrative remedies or sanctions it has at its disposal. It is also possible that the matter could be referred to another appropriate investigatory agency for action.

A number of referrals were declined on the grounds that the referrals did not sufficiently allege Medicaid provider fraud, were not substantiated by a preliminary review, or the potential for successful criminal prosecution was low. Some of the allegations pertained to Medicaid recipient fraud, but the MID's federal grant does not allow the MID to use funding to investigate Medicaid recipient fraud. Therefore, the MID refers recipient fraud allegations to the Division of

Health Benefits and the county Departments of Social Services. Please note that allegations of Medicaid recipient fraud should be referred to the Recipient Services Section of the Division of Health Benefits, 919-527-7749, or the Fraud Section of the local county Department of Social Services.

Medicaid fraud investigations are complex and labor intensive. The consequences of a fraud conviction on a provider can be severe. Therefore, the MID takes great care to ensure that allegations are substantiated before proceeding with criminal charges or civil actions.

2. The number of cases investigated.

During FY 19/20 the MID staff investigated 513 cases. Due to the length of time required to properly investigate a case, a number of these cases were referred and/or opened prior to FY 19/20. The subjects of investigations included ambulance transportation providers, assisted living facilities, clinical labs, dentists, durable medical equipment providers, home care providers, laboratories, home health agencies, hospitals, medical doctors, mental health providers, pain management centers, pharmaceutical manufacturers, pharmacies, psychiatrists and substance abuse treatment centers. The MID also investigated caregivers accused of patient physical abuse at Medicaid funded facilities, and the misappropriation of patient personal funds.

3. The number of Criminal Convictions and Civil Settlements.

a. Criminal Convictions

During FY 19/20, the MID successfully convicted 3 providers. These criminal convictions resulted in more than 12 months of incarceration and in the recovery of $6,122,472.02 in restitution, fines, and fees. Details of these convictions are set forth in Section IV of this report.

Of particular note was the criminal conviction of Gate City Transportation ("Gate City"). Gate City was an ambulance service provider located in Guilford County, North Carolina. This case was prosecuted in federal court in the Middle District of North Carolina, and it reflects MID's continuing coordination with our federal partners (including the U.S. Department of Health and Human Services, Office of Inspector General and the Internal Revenue Service) to recover stolen funds and prosecute those who commit Medicaid fraud.

MID received a referral from the Division of Health Benefits alleging that Gate City Transportation was billing Medicaid for ambulance services, but was providing transportation service with vans and cars. The investigation of this case was conducted by MID, the Internal Revenue Service, and the U.S. Department of Health and Human Services. MID financial investigators and attorneys, who are cross designated as Special Assistant United States Attorneys, worked effectively with their federal partners on this case. The joint investigation revealed that from approximately November 1, 2010, to February 12, 2015, Gate City Transportation stopped operating convalescent ambulances and instead began providing non-emergency van transportation to ambulatory and wheelchair-bound clients. It did so without getting approval from the county Division of Social Services to provide the van transportation.

The majority of Gate City Transportation's clients in that time period were Medicaid recipients. The company continued submitting Medicaid claims using ambulance codes, even though it was not operating ambulance services, because they are reimbursed at a higher rate. The false claims defrauded the Medicaid program out of more than $5 million.

The case was prosecuted in federal court by the United States Attorney's Office in the Middle District of North Carolina. Gate City Transportation, Inc. pled guilty to one count of health care fraud (18 U.S.C. 1347) in October 2018 and was sentenced on August 15, 2019. The company was ordered to pay a $100 fine, a $400 special assessment, and restitution in the amount of $5,245,640.02 to the North Carolina Fund for Medical Assistance.

b. Civil Settlements

During FY 19/20, the MID successfully obtained 14 civil settlements and recovered $19,394,924.47 in damages, interest, civil penalties, and costs.

Of significance was a civil settlement entered into between the Federal Government, the named Plaintiff States (including North Carolina), and the pharmaceutical company, Reckitt Benckiser. Reckitt Benckiser Group plc is an English public limited company headquartered in Slough, England, the United Kingdom. Reckitt Benckiser, LLC is a subsidiary of Reckitt Benckiser Group plc and is headquartered in New Jersey. The State of North Carolina was named as a plaintiff in six (6) whistleblower actions.

The Civil Actions collectively alleged that from January 1, 2010, through December 31, 2014, Reckitt Benckiser Group violated the federal and states' False Claims Act by (1) aggressively marketing Suboxone to doctors and encouraging them to "dose high" in excess of 24 milligrams despite the drug's "ceiling effect" in the treatment of opioid addiction, (2) improperly promoting Suboxone film for induction treatment (i.e., in the beginning of therapy) even though the film is approved only for maintenance treatment, (3) promoting Suboxone film off-label use in reducing opioid abuse and misuse without scientific support, and (4) paying kickbacks to prescribers in the form of valuable proprietary information and support programs.

Under the terms of Settlement Agreement, Reckitt Benckiser Group plc and Reckitt Benckiser, LLC agreed to pay to the United States of America and the States, a total of $700,000.00. As a result of these settlements, North Carolina recovered $14,864,317.68. This Settlement was obtained with the assistance of the United States Department of Justice, the National Association of Medicaid Fraud Control Units, including support from the Medicaid Investigations Division. Details of this case are set forth in Section V of this report.

4. The total amount of funds recovered in each case; Allocations.

Together, these 3 criminal convictions and 14 civil recoveries represent a total of $25,517,396.49 recovered for the State of North Carolina. Consistent with federal reporting instructions, recoveries are amounts individual and organizational defendants are ordered to pay in criminal cases and must pay in civil judgments and settlements and may not reflect actual

collections. A case by case breakdown of the amounts recovered in each case and allocation of recovered funds is shown below in Table A.

Table A Funds Recovered 07/01/2019 - 06/30/2020						
Name	**Federal Government**	**NC Medicaid**	**Civil Penalty & Forfeiture Fund**	**NC DOJ Costs**	**Other**	**Total**
Gate City Transportation	3,431,173.14	1,814,466.88	0.00	0.00	500.00	5,246,140.02
Devon Rambert Hairston	541,616.03	272,109.97	62,226.00	0.00	100.00	876,052.00
Lee Ellen Rudisill Oeser	0.00	0.00	0.00	0.00	280.00	280.00
Total Criminal Recoveries	3,972,789.17	2,086,576.85	62,226.00	0.00	880.00	$ 6,122,472.02
Kruszewski v. Reckitt Benckiser Pharmaceuticals, et al	8,753,725.80	2,383,028.72	2,462,654.40	209,539.44	1,055,369.32	14,864,317.68
Dorothy Agbafe-Mosley, MD/Ave Maria Family Practice	730,932.06	523,373.00	0.00	33,680.94	0.00	1,287,986.00
Practice Fusion, Inc.	408,709.01	152,398.99	153,271.25	13,041.36	0.00	727,420.61
Arnold & Shipman v. Avanir Pharmaceuticals, Inc.	369,448.86	102,614.28	126,358.00	9,289.41	53,268.63	660,979.18
Stefan J. Simoncic, DDS / Triad Oral Surgery	321,843.44	115,000.26	120,065.32	10,215.98	0.00	567,125.00
Arnstein & Senousy v. Teva Pharmaceuticals, Inc.	214,094.42	47,090.38	49,164.43	4,183.25	41,024.00	355,556.48
Dr. Santa McKibbins, DDS / Santa McKibbins Family Dentistry	213,492.14	155,372.97	0.00	10,204.74	0.00	379,069.85
Ameer v. ResMed, Inc., et al	98,671.36	63,228.81	0.00	4,176.60	11,103.98	177,180.75
LFP, LLC v. Miraca Life Sciences, Inc., e tal	78,972.19	41,518.52	0.00	2,688.32	9,312.27	132,491.30
Wood v. Avalign Technologies, Inc., et al	65,739.45	17,948.97	18,336.96	1,560.24	9,957.88	113,543.50
Ashton, et al v. Logan Laboratories, LLC, et al	33,632.97	10,840.85	10,466.93	890.60	5,015.75	60,847.10
CareFusion Cprporation (Wood v. Avalign Technologies)	22,765.84	6,154.83	6,396.74	544.28	3,473.75	39,335.44
Vance Recovery (Ittel-Rothenberger, et al v. Eric Morse, et al)	12,683.77	8,881.23	0.00	590.06	4,863.30	27,018.36
Doe v. Novo Nordisk, Inc., et al	1,542.45	0.00	271.59	47.12	189.06	2,050.22
Total Civil Recoveries	11,326,253.76	3,627,451.81	2,946,985.62	300,652.34	1,193,577.94	$ 19,394,921.47
Total Recoveries	15,299,042.93	5,714,028.66	3,009,211.62	300,652.34	1,194,457.94	$ 25,517,393.49
* There are no joint and several cases during this reporting period.						

IV. CRIMINAL CONVICTIONS

The MID reports all criminal convictions to the United States Department of Health and Human Services Exclusion Program which, in turn, will take administrative action to exclude these providers from future participation as providers in Medicaid and any other federally funded health care program for a period of years.

NC v. Lee Ellen Rudisill Oeser

Lee Ellen Rudisill Oeser was employed by the Gaston County School System, a Medicaid provider, as a speech pathologist, working at Costner Elementary School. This matter was referred to MID by an administrator for the North Carolina Examiners for Speech-Language Pathologists and Audiologists.

The investigation revealed that during the 2016 school year (August 2016-June 2017), Oeser failed to provide speech pathology services to students in accordance with the students' Individual Education Program. Oeser created false documents to support her claims that she provided services to the students when, in fact, she did not. Gaston County School System used the records to bill the Medicaid program for the eligible students. Oeser was terminated from the school system when it was discovered that she was not providing services.

On July 29, 2019, Oeser pled guilty before the Honorable Michael Lands in Gaston County District Court to one count of common law forgery. Oeser was sentenced to a 45 day sentence, suspended, with a $100 fine and court costs and was placed on 18 months unsupervised probation.

US v. Gate City Transportation, Inc.

Gate City Transportation, Inc. was a medical transport company enrolled with the North Carolina Medicaid program as an ambulance provider, owning and operating convalescent ambulances that provide non-emergency transportation to stretcher-bound patients. Gate City was based in Greensboro, North Carolina. This matter was referred to MID by the Division of Health Benefits.

The investigation revealed that from approximately November 1, 2010, to February 12, 2015, Gate City stopped operating convalescent ambulances and instead began providing non-emergency van transportation to ambulatory and wheelchair-bound clients. They did so without getting approval from the county Division of Social services to provide van transportation. Gate City continued submitting Medicaid claims using ambulance codes, even though it wasn't operating ambulance services, because they are reimbursed at a higher rate.

In October 2018, Gate City pled guilty in the Middle District of North Carolina to one count of health care fraud and was sentenced on August 15, 2019. The company was ordered to pay a $100 fine, a $400 special assessment, and restitution in the amount of $5,245,640.02 to the N.C. Fund for Medical Assistance

US v. Devon Rambert Hairston

Devon Rambert Hairston was a licensed nurse practitioner and the medical director of Taylor Behavioral Health Services located in Monroe, North Carolina. This matter developed in conjunction with other MID cases.

The investigation revealed Rambert Hairston participated in an ongoing scheme to defraud the Medicaid program by signing off on medical progress notes indicating that she had rendered services to beneficiaries when she had not rendered such services and rarely interacted with beneficiaries at all. Tony and Jerry Taylor then submitted false and fraudulent claims to Medicaid based on her false notes.

During the time period from approximately September 2016 to February 2017, Tony and Jerry Taylor submitted approximately $1.3 million worth of false and fraudulent claims to Medicaid under Rambert Hairston's individual National Provider Identifier (NPI) number. As a result, Medicaid wired at least $813,726 directly into her State Employees' Credit Union account. She then arranged for the distribution of those funds from her account into various other accounts held by Tony/Jerry Taylor. This case was worked jointly with the FBI, IRS, and USPS.

In April 2019, Rambert Hairston pled guilty in the Western District of North Carolina to one count of money laundering conspiracy. She received an active sentence of twelve months and one day, followed by one year of supervised release. She was also ordered to pay a $100 assessment as well as $813,726.00 in restitution to the Medicaid program. In addition, she was ordered to pay $62,226.00 in forfeiture.

V. CIVIL RECOVERIES

RECKITT BENCKISER PHARMACEUTICALS

Reckitt Benckiser Group plc is an English public limited company headquartered in Slough, England. Reckitt Benckiser, LLC was a subsidiary of Reckitt Benckiser Group that distributed, marketed, and sold pharmaceutical products in the United States, including North Carolina. This matter was referred to the MID by a *qui tam* plaintiff.

It was alleged that from January 1, 2010, through December 31, 2014, Reckitt Benckiser Group plc and Reckitt Benckiser, LLC knowingly promoted the sale and use of Suboxone to physicians who were writing prescriptions (a) without any counseling or psychosocial support,

such that the prescriptions were not for a medically accepted indication; and (b) for uses that were unsafe, ineffective, and medically unnecessary and that were often diverted for uses that lacked a legitimate medical purpose. It was also alleged that Reckitt promoted the sale of Suboxone Film using false and misleading claims that it was less subject to diversion and abuse than other buprenorphine products.

On October 16, 2019, in conjunction with a national settlement, a settlement agreement was executed between Reckitt Benckiser Group plc, Reckitt Benckiser, LLC and the State of North Carolina in settlement of these allegations. Under the terms of North Carolina's settlement, the State of North Carolina recovered $14,864,317.68. Of that amount, the federal government received $8,753,725.80 to satisfy North Carolina's obligation to return the federal portion of Medicaid recoveries to the federal government. The North Carolina State share of the settlement was $6,110,591.88. Of this amount, $2,383,028.72 was paid to the North Carolina Medicaid Program as restitution and interest, $2,462,654.40 was paid to the Civil Penalty Forfeiture Fund for the support of public schools, $1,055,369.32 was paid to the *qui tam* plaintiff, and $209,539.44 was paid to the North Carolina Department of Justice for costs of collection and investigation.

DOROTHY AGBAFE-MOSLEY, MD/AVA MARIA FAMILY PRACTICE

Dorothy Agbafe-Mosley, MD is a Medicaid provider who provides Family Medicine and Addiction Medicine services in and around New Hanover County, North Carolina. This matter was referred to the MID by the Division of Health Benefits, Office of Compliance and Program Integrity.

It was alleged that from January 1, 2015, through December 31, 2018, Agbafe-Mosley billed for services that were not medically necessary, billed for inappropriate codes and billed for more than 24 hours in a given day.

On November 12, 2019, a settlement agreement was executed between Agbafe-Mosley and the State of North Carolina in settlement of these allegations. Under the terms of North Carolina's settlement, the State of North Carolina recovered $1,287,986.00. Of that amount, the federal government received $730,932.06 to satisfy North Carolina's obligation to return the federal portion of Medicaid recoveries to the federal government. The North Carolina State share of the settlement was $557,053.94. Of this amount, $523,373.00 was paid to the North Carolina Medicaid Program as restitution and interest and $33,680.94 was paid to the North Carolina Department of Justice for costs of investigation.

PRACTICE FUSION, INC.

Practice Fusion, Inc. is a vendor of health information technology incorporated in Delaware and headquartered in San Francisco, California. This matter was referred to the MID by the National Association of Medicaid Fraud Control Units.

Practice Fusion operates and conducts business throughout the United States, including North Carolina. It was alleged that from November 1, 2013, through August 31, 2017, Practice Fusion, a web-based electronic health records company, accepted payments from specific drug manufacturers in exchange for promoting some of the same manufacturer's drugs to physicians using Practice Fusion's software.

In April 2020, in conjunction with a national settlement, a settlement agreement was executed between Practice Fusion and the State of North Carolina in settlement of these allegations. Under the terms of North Carolina's settlement, the State of North Carolina recovered $727,420.61. Of that amount, the federal government received $408,709.01 to satisfy North Carolina's obligation to return the federal portion of Medicaid recoveries to the federal government. The North Carolina State share of the settlement was $318,711.60. Of this amount, $152,398.99 was paid to the North Carolina Medicaid Program as restitution and interest, $153,271.25 was paid to the Civil Penalty Forfeiture Fund for the support of public schools, and $13,041.36 was paid to the North Carolina Department of Justice for costs of collection and investigation.

AVANIR PHARMACEUTICALS, INC.

Avanir Pharmaceuticals, Inc. Is headquartered in Aliso Viejo, California. Avanir distributes, markets and sells a pharmaceutical product in the United States, including North Carolina, sold under the trade name Nuedexta. This matter was referred to the MID by a *qui tam* plaintiff.

It was alleged that from October 29, 2010, through December 31, 2016, Avanir off-label marketed its drug Nuedexta and provided remuneration to health care providers to induce those providers to prescribe Nuedexta.

On November 14, 2019, in conjunction with a national settlement, a settlement agreement was executed between Avanir and the State of North Carolina in settlement of these allegations. Under the terms of North Carolina's settlement, the State of North Carolina recovered $660,979.18. Of that amount, the federal government received $369,448.86 to satisfy North Carolina's obligation to return the federal portion of Medicaid recoveries to the federal government. The North Carolina State share of the settlement was $291,530.32. Of this amount, $102,614.28 was paid to the North Carolina Medicaid Program as restitution and interest, $126,358.00 was paid to the Civil Penalty Forfeiture Fund for the support of public schools,

$53,268.63 was paid to the *qui tam* plaintiff, and $9,289.41 was paid to the North Carolina Department of Justice for costs of collection and investigation.

STEFAN SIMONCIC, DDS/TRIAD ORAL SURGERY

Stefan Simoncic, D.D.S. is a Medicaid provider who provides oral surgical services in and around Guilford County, North Carolina. This matter was referred to the MID by MID's Data Mining team.

It was alleged that from January 1, 2015, through August 30, 2019, Simoncic billed for dental codes "Detailed and Extensive Oral Evaluation – problem focused" and "Deep Sedation/general anesthesia – each additional 15 minutes," that were not medically necessary, had no supporting clinical documentation and were performed in violation of Division of Medical Assistance Clinical Coverage Policy.

On September 23, 2019, a settlement agreement was executed between Simoncic and the State of North Carolina in settlement of these allegations. Under the terms of North Carolina's settlement, the State of North Carolina recovered $567,125.00. Of that amount, the federal government received $321,843.44 to satisfy North Carolina's obligation to return the federal portion of Medicaid recoveries to the federal government. The North Carolina State share of the settlement was $245,281.56. Of this amount, $115,000.26 was paid to the North Carolina Medicaid Program as restitution, $120,065.32 was paid to the Civil Penalty Forfeiture Fund for the support of public schools, and $10,215.98 was paid to the North Carolina Department of Justice for costs of collection and investigation.

TEVA PHARMACEUTICALS, INC.

Teva Pharmaceuticals, Inc. is a pharmaceutical manufacturer that distributes, markets, and sells pharmaceutical products in the United States, including North Carolina. This matter was referred to the MID by a *qui tam* plaintiff.

It was alleged that from 2007 through 2012, Teva off-label marketed its drugs Copaxone and Azilect and provided remuneration to health care providers to induce those providers to prescribe Teva's drugs.

Under the terms of North Carolina's settlement, the State of North Carolina recovered $355,556.48. Of that amount, the federal government received $214,094.42 to satisfy North Carolina's obligation to return the federal portion of Medicaid recoveries to the federal government. The North Carolina State share of the settlement was $141,462.06. Of this amount, $47,090.38 was paid to the North Carolina Medicaid Program as restitution, $49,164.43 was paid to the Civil Penalty Forfeiture Fund for the support of public schools, $41,024.00 was paid to the

qui tam plaintiff, and $4,183.25 was paid to the North Carolina Department of Justice for costs of collection and investigation.

SANTA MCKIBBINS, D.D.S./SANTA MCKIBBINS FAMILY DENTISTRY

Santa McKibbins, DDS is the owner of Santa McKibbins Family Dentistry. McKibbins provides general dentistry services in and around Durham County, North Carolina. This matter was referred to the MID by the Division of Health Benefits Office of Compliance and Program Integrity.

It was alleged that from January 1, 2013, through April 30, 2018, McKibbins billed for services that were medically unnecessary, had no supporting clinical documentation and were provided in violation of Division of Health Benefits Clinical Coverage policy.

On September 4, 2019, a settlement agreement was executed between McKibbins and the State of North Carolina in settlement of these allegations. Under the terms of North Carolina's settlement, the State of North Carolina recovered $379,069.85. Of that amount, the federal government received $213,492.14 to satisfy North Carolina's obligation to return the federal portion of Medicaid recoveries to the federal government. The North Carolina State share of the settlement was $165,577.71. Of this amount, $155,372.97 was paid to the North Carolina Medicaid Program as restitution and interest, and $10,204.74 was paid to the North Carolina Department of Justice for costs of investigation.

RESMED, INC.

Resmed, Inc., is a Minnesota Corporation with its principal place of business in San Diego, California. ResMed provides various health care goods and services, including manufacturing and selling positive airway pressure machines, masks, and related supplies that are designed to treat or diagnose sleep-related respiratory disorders. This matter was referred to the MID by a *qui tam* plaintiff.

ResMed operates and conducts business throughout the United States, including North Carolina. It was alleged that from October 1, 2009, through April 23, 2019, ResMed induced improper referrals, orders, or purchases of equipment by providing various patient management services furnished by ResMed itself.

On December 16, 2019, in conjunction with a national settlement, a settlement agreement was executed between ResMed and the State of North Carolina in settlement of these allegations. Under the terms of North Carolina's settlement, the State of North Carolina recovered $177,180.75. Of that amount, the federal government received $98,671.36 to satisfy North Carolina's obligation to return the federal portion of Medicaid recoveries to the federal government. The North Carolina State share of the settlement was $78,509.39. Of this amount,

$63,228.81 was paid to the North Carolina Medicaid Program as restitution and interest, $11,103.98 was paid to the *qui tam* plaintiff, and $4,176.60 was paid to the North Carolina Department of Justice for costs of investigation.

MIRACA LIFE SCIENCES, INC.

Miraca Life Sciences, Inc., provides clinical pathology laboratory services in North Carolina. This matter was referred to the MID by a *qui tam* plaintiff.

It was alleged that from February 1, 2012, through December 31, 2016, Miraca provided free or discounted technology-related consulting services to physicians and other health care providers in exchange for those physicians' referral of patients.

Under the terms of North Carolina's settlement, the State of North Carolina recovered $132,491.30. Of that amount, the federal government received $78,972.19 to satisfy North Carolina's obligation to return the federal portion of Medicaid recoveries to the federal government. The North Carolina State share of the settlement was $53,519.11. Of this amount, $41,518.52 was paid to the North Carolina Medicaid Program as restitution and interest, $9,312.27 was paid to the *qui tam* plaintiff, and $2,688.32 was paid to the North Carolina Department of Justice for costs of investigation.

AVALIGN TECHNOLOGIES, INC./INSTRUMED INTERNATIONAL, INC.

Avalign Technologies is a Delaware corporation with its principal place of business in Illinois. Avalign is the sole owner of Instrumed. Avalign and Instrumed manufacture, market and sell/supply medical devices to hospitals and other health care providers for use in medical procedures in the United States, including North Carolina. This matter was referred to the MID by a *qui tam* plaintiff.

It was alleged that from January 1, 2007, through December 31, 2014, Avalign/Instrumed sold medical devices to customers, who then sold directly to hospitals and other care providers for use in medical procedures, while knowing that the devices were not approved or cleared for marketing by the FDA.

On October 22, 2019, in conjunction with a national settlement, a settlement agreement was executed between Avalign/Instrumed and the State of North Carolina in settlement of these allegations. Under the terms of North Carolina's settlement, the State of North Carolina recovered $113,543.50. Of that amount, the federal government received $65,739.45 to satisfy North Carolina's obligation to return the federal portion of Medicaid recoveries to the federal government. The North Carolina State share of the settlement was $47,804.05. Of this amount, $17,948.97 was paid to the North Carolina Medicaid Program as restitution and interest, $18,336.96 was paid to the Civil Penalty Forfeiture Fund for the support of public schools,

$9,957.88 was paid to the *qui tam* plaintiff, and $1,560.24 was paid to the North Carolina Department of Justice for costs of collection and investigation.

LOGAN LABORATORIES, LLC

Logan Laboratories, LLC is a Florida corporation with its principal place of business in Tampa, Florida. This matter was referred to the MID by a *qui tam* plaintiff.

Logan Laboratories operates and conducts business throughout the United States, including North Carolina. It was alleged that from January 1, 2012, through December 31, 2017, Logan Labs billed the Medicaid program for presumptive and definitive urine drug tests that were not medically necessary.

On April 14, 2020, a settlement agreement was executed between Logan Labs and the State of North Carolina in settlement of these allegations. Under the terms of North Carolina's settlement, the State of North Carolina recovered $60,850.10. Of that amount, the federal government received $33,632.97 to satisfy North Carolina's obligation to return the federal portion of Medicaid recoveries to the federal government. The North Carolina State share of the settlement was $27,214.13. Of this amount, $10,840.85 was paid to the North Carolina Medicaid Program as restitution and interest, $10,466.93 was paid to the Civil Penalty Forfeiture Fund for the support of public schools, $5,015.75 was paid to the *qui tam* plaintiff, and $890.60 was paid to the North Carolina Department of Justice for costs of collection and investigation.

CAREFUSION CORPORATION

CareFusion Corporation is a Delaware corporation with its principal place of business in San Diego, California. CareFusion sells medical equipment in the United States, including North Carolina. This matter was referred to the MID by a *qui tam* plaintiff.

It was alleged that from January 1, 2007, through December 31, 2014, CareFusion sold medical devices that it had purchases from Instrumed International, Inc., to hospitals and other health care providers for use in medical procedures, while knowing that the devices were not approved or cleared for marketing by the FDA.

In September 2019, in conjunction with a national settlement, a settlement agreement was executed between CareFusion and the State of North Carolina in settlement of these allegations. Under the terms of North Carolina's settlement, the State of North Carolina recovered $39,335.44. Of that amount, the federal government received $22,765.84 to satisfy North Carolina's obligation to return the federal portion of Medicaid recoveries to the federal government. The North Carolina State share of the settlement was $16,569.60. Of this amount, $6,154.83 was paid to the North Carolina Medicaid Program as restitution and interest, $6,396.74 was paid to the Civil Penalty Forfeiture Fund for the support of public schools, $3,473.75 was paid

to the *qui tam* plaintiff, and $544.28 was paid to the North Carolina Department of Justice for costs of collection and investigation.

VANCE RECOVERY

Vance Recovery is a North Carolina corporation with its principal place of business in Henderson, North Carolina. Vance Recovery is an Opioid Treatment Program that provides medication assisted therapy and counseling to individuals who are dependent upon opiates. This matter was referred to the MID by a *qui tam* plaintiff.

It was alleged that from June 14, 2017, through May 23, 2018, Vance Recovery billed for duplicative presumptive urine drug testing and ordered definitive drug testing for at least five Medicaid recipients before presumptive tests results for those patients were known.

On September 3, 2019, a settlement agreement was executed between Vance Recovery and the State of North Carolina in settlement of these allegations. Under the terms of North Carolina's settlement, the State of North Carolina recovered $27,018.36. Of that amount, the federal government received $12,683.77 to satisfy North Carolina's obligation to return the federal portion of Medicaid recoveries to the federal government. The North Carolina State share of the settlement was $14,334.59. Of this amount, $8,881.23 was paid to the North Carolina Medicaid Program as restitution, $4,863.30 was paid to the *qui tam* plaintiff, and $590.06 was paid to the North Carolina Department of Justice for costs of investigation.

PRACTICE THERAPEUTICS

Practice Therapeutics is a U.S. company headquartered in New Jersey. This matter was referred to the MID by a *qui tam* plaintiff.

Practice Therapeutics operates and conducts business throughout the United States, including North Carolina. It was alleged that from January 1, 2007, through December 31, 2010, Practice Therapeutics engaged in an illegal marketing and kickback scheme in connection with certain Novo Nordisk drugs. Practice Therapeutics caused clinical educators to promote the Novo Nordisk drugs or provide remuneration to patients or prescribers in order to induce prescriptions of the drugs.

Under the terms of North Carolina's settlement, the State of North Carolina recovered $2,269.61. Of that amount, the federal government received $1,542.45 to satisfy North Carolina's obligation to return the federal portion of Medicaid recoveries to the federal government. The North Carolina State share of the settlement was $727.16. Of this amount, $219.39 was paid to the North Carolina Medicaid Program as restitution, $271.59 was paid to the Civil Penalty Forfeiture Fund for the support of public schools, $189.06 was paid to the *qui tam*

plaintiff, and $47.12 was paid to the North Carolina Department of Justice for costs of investigation.

VI. PROSPECTUS

MID works to achieve a high standard of excellence in our efforts to effectively and efficiently combat fraud and abuse within the Medicaid Program. We continue to be optimistic about the overall progress of our efforts to combat fraud and abuse in the Medicaid Program. Our optimism is based on a number of factors.

- ✓ MID investigators continue to uncover and obtain evidence of complex fraud schemes. MID criminal enforcement attorneys continue to make a significant impact by prosecuting felony cases resulting in active time. MID civil enforcement attorneys continue to be actively involved in numerous state cases and national global/multi-state civil cases which have potential for successful conclusions and the recovery of funds for the state in future fiscal years.
- ✓ The MID continues to work as part of the United States Department of Justice "Operation Synthetic Opioid Surge" on the Opioid Task Force of the U.S. Attorney for the Middle District. The MID is currently investigating a number of providers for fraudulent activities related to their opioid prescribing practices, in addition to actual patient harm caused by those practices. The MID has also participated in Attorney General Stein's opioid roundtable and provided assistance in the development of the "Stop Act" and the "HOPE Act."
- ✓ MID continues to work to address the opioid crisis in other ways, too. For example, in 2018 MID filed a complaint against drug manufacturer Insys Therapeutics, Inc., alleging violations of the N.C. False Claims Act. We were joined in the filing by several other *qui tam* states. Insys produced and sold Subsys, a highly potent and addictive fentanyl pain killer that is sprayed under the tongue and used to treat breakthrough cancer pain. MID alleges that Insys paid kickbacks to entice doctors and nurse practitioners to prescribe Subsys to patients. These kickbacks ranged from speaker payments for phony speeches to lavish meals and entertainment. The complaint also alleges that Insys employees pushed prescribers to prescribe Subsys for patients who were not diagnosed with cancer, and lied to insurance companies about patient diagnoses to obtain Medicaid reimbursements for Subsys prescriptions. Insys executed a settlement agreement with the federal government to pay a total of $195 million over five years. Insys paid the first installment delineated in the settlement agreement of $5 million dollars, $185,000.00 of which was paid to the states. However, Insys filed for bankruptcy on June 10, 2019, only days after the federal settlement agreement was executed. Insys moved for an order approving bidding procedures for the sale of assets, including Subsys and other of its drug products. The bankruptcy case continues. The MID is actively monitoring the Insys bankruptcy and will continue to pursue an appropriate resolution in light of the company's unsettled financial and operational future.

- ✓ MID continues to have a reliable exchange with the North Carolina Medicaid Agency, as well as with other state, local and federal investigative, licensing, law enforcement and prosecutorial agencies. These relationships have played an important role in MID's success and will continue to contribute to our accomplishments in future fiscal years.
- ✓ HHS-OIG granted MID permission to engage in data mining in November 2017. In February 2018, NC DHHS agreed to an amendment to the Memorandum of Understanding between MID and DHHS to establish procedures for coordination with respect to MID's data mining activities. In FY 2019 MID and OCPI met regularly to coordinate on data mining. MID will continue to coordinate with OCPI and to engage in data mining. We expect data mining will allow us to broaden our case mix in future years. We have already opened several healthcare fraud investigations based upon our data mining efforts. As illustrated in the case summary above regarding Simoncic/Triad Oral Surgery, MID's data mining efforts have already been productive.
- ✓ In SFY 19-20, MID completed its project to replace its prior document management system with a new case management system. MID's document management system had been identified in our FY 2018 annual report as a "challenge." In SFY 18-19 MID began the process of replacing the system. This year we are glad to report that, with substantial assistance from the NCDOJ IT Department, we have fully transitioned to the new document and case management system.
- ✓ MID has continued to meet regularly with OCPI to discuss referrals, initiatives and other matters of significance to both of our organizations.
- ✓ MID also has worked closely with NCDHHS with respect to Medicaid utilization access for our investigators. We are grateful for the NCDHHS' assistance and cooperation.

MID also continues to face challenges. In SFY 19-20 our criminal conviction numbers were lower than in previous years, owing to limitations (closed courts, impact on fieldwork) caused by the COVID-19 pandemic as well as transition of attorneys leaving and hiring of new staff.

We see our primary challenge in the coming year to be the current transition of the North Carolina Medicaid Program to a managed care model of care delivery. MID is coordinating with NC DHHS on this. In particular, we have been working with DHHS to ensure that MID will have access to the data stream for the encounter data associated with the provision of care in the managed care system, while continuing to receive the fee-for-service data stream to the extent areas of the Program remain in a fee-for-service delivery model. In addition, we have been working with OCPI with respect to planning outreach to the managed care organizations' Special Investigation Units (SIUs). We expect to develop effective working relationships with the SIUs and to develop a stream of fraud referrals from them.

MID's criminal and civil operations continue to recover funds resulting in a positive return on investment for every state dollar invested in MID. Our operations also continue to save state funds by deterring potential fraudulent activity.

In conclusion, we remain optimistic as to the long-term success of MID. We continue to be committed to fighting fraud and abuse in the Medicaid Program as efficiently and effectively as possible, and pledge our best efforts toward the accomplishment of that goal.