

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Incarceration Fiscal Note

(G.S. 120-36.7)

BILL NUMBER: House Bill 1473 (Seventh Edition) (Incarceration Fiscal Note only on Section 15.8 –Actions to Reduce Medicaid Fraud)

SHORT TITLE: 2007 Appropriations Act.

SPONSOR(S): Senators Dalton, Hagan and Garrou

	FISCAL IMPACT (Section 15.8)				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>
GENERAL FUND					
Judicial-					
Correction		\$84,765	\$232,821	\$239,805	\$247,000
Recurring					
Nonrecurring	\$544,320				
Justice					
Req	\$655,485				
Receipts	<u>\$461,614</u>	<u>\$454,742</u>	<u>\$468,384</u>	<u>\$482,435</u>	<u>\$496,908</u>
State Total	\$193,871	\$111,581	\$114,927	\$118,375	\$121,926
TOTAL STATE EXPENDITURES	\$738,191	\$196,346	\$347,748	\$358,181	\$368,926
PRISON BEDS POSITIONS					
DOC	0	3	8	8	8
DOJ	0	1	3	3	3
DOJ	5	5	5	5	5
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Correction; Judicial Branch., Department of Justice					
EFFECTIVE DATE: December 1, 2007					
<i>*This fiscal analysis is independent of the impact of other criminal penalty bills being considered by the General Assembly, which could also increase the projected prison population and thus the availability of prison beds in future years. The Fiscal Research Division is tracking the cumulative effect of all criminal penalty bills on the prison system as well as the Judicial Department.</i>					

BILL SUMMARY:

Section 15.8 in HB 1473 (7th edition) does the following:

- (1) Increases criminal penalties for Medicaid provider fraud
- (2) Expands liability for provider fraud to include additional prohibited acts
- (3) Authorizes a private person to bring a civil action for Medicaid provider fraud and entitles the private person to a portion of the amount recovered
- (4) Clarifies that an employee may not be held liable in a civil action for providing information to the State regarding Medicaid provider fraud
- (5) Authorizes the Attorney General to issue a subpoena for records pursuant to an investigation of alleged Medicaid recipient fraud, wrongful acts pertaining to patient property, and criminal prosecution for assaults on a handicapped person and for patient abuse and neglect.
- (6) Prohibits kickbacks with respect to Medicaid provider fraud and provides criminal penalties for such acts

Section 15.8 of H.B. 1473 (7th edition) increases the criminal and civil penalties for medical assistance provider fraud; authorizes private civil action concerning false provider claims; and authorizes certain investigative demand procedures.

Section 15.8. (a). Rewrites G.S. 108A-70.11 to redefine the “Medical Assistance Program” as the “Medical Assistance Program established by G.S. 108A-54, the North Carolina Division of Medical Assistance, or its fiscal agent.”

Section 15.8. (b). Amends G.S. 108A-70.12(a) to also make it unlawful for medical assistance providers under the Medical Assistance Program to: 1) conspire to defraud the Medical Assistance Program by getting a false claim allowed or paid; and, 2) knowingly make or use a false record to conceal, avoid, or decrease an obligation to pay/transmit money or property to the Medical Assistance Program.

Section 15.8.(c). Amends G.S. 108A-70.12(b)(1) to increase the floor and ceiling for civil penalties assessed against violators of G.S. 108A-70.12; from \$5,000 to \$5,500, and from \$10,000 to \$11,000, respectively.

Section 15.8. (d). Enacts new Part 7A (Civil Action by Private Persons for Provider False Claims) of Article 2 of G.S. Chapter 108A to allow a person to bring a civil action for a violation of G.S. 108A-70.12 on behalf of the person and the State, in the name of the State (G.S. 108A-70.17).

G.S. 108A-70.17A. If the State proceeds with the action, it assumes primary responsibility to prosecute the action and is not bound by the person who initiates it. Provides for state dismissal of the action; for state settlement of the action; for the imposition of limitations on the person initiating the action; for the person initiating the action to continue if the state elects not to proceed; for a staying of the discovery period; and, for the state to pursue the claim through alternative remedies.

G.S. 108A-70.17B. Provides for the award of penalties and damages to a qui tam plaintiff, whether the State proceeds with the action or the person bringing the action proceeds. If the state proceeds, the qui tam plaintiff may be awarded between 15 and 25 percent of the action proceeds or claim settlement, depending upon the extent of substantial contribution. Such award may not exceed 10 percent of the proceeds/settlement if the action brought is found to be based primarily on information *other* than that proved by the plaintiff. If the state does not proceed and the qui tam plaintiff continues the action, the court may award 25 to 30 percent of the proceeds/settlement. The qui tam plaintiff’s share of the proceeds/settlement may be reduced if he is found to have planned or initiated the violation, accounting

for that person's role in advancing the case to litigation (i.e. dismissal without proceeds, upon conviction of criminal conduct). Also provides for the award of reasonable attorney's fees and expenses to the defendant if the action is frivolous.

G.S. 108A-70.17C. Bars the following actions: 1) an action based on information from a present or former State employee, unless that employee exhausted existing internal procedures and unless the State failed to act on the information within a reasonable time; 2) actions based upon allegations that are the subject of a civil suit or administrative proceeding the State is already party to; and, 3) actions based upon public disclosure in several settings, unless the action is brought by the Attorney General or the person bringing the action is an "original source" of the information.

G.S. 108A-70.17D. Sets the statute of limitations at: 1) six years after a violation is committed; or, 2) more than three years after the date when facts material to the right of action should have been known, but in that event, not more than 10 years after the date the violation is committed, whichever is later.

Section 15.8.(e). Rewrites G.S. 108A-70.15 to exempt from civil liability any person who provides information, in the absence of fraud or malice, for the investigation of false claim violations under Part 7A of Article 2. Makes conforming changes to also provide relief to provider employees for lawful acts in the furtherance of actions pursuant to Part 7A.

Section 15.8.(f). Enacts new G.S. 108A-63.1 (Authorized investigative demand procedures) allowing the Attorney General to issue a subpoena for records, and/or testimony related to violations of G.S. 108A-64 (Medical assistance recipient fraud), 108A-60 (Protection of patient property), 14-32.1 (Assaults on handicapped persons; punishments), or 14-32.2 (Patient neglect and abuse; punishments). Specifies the objects and actions required, and provides for witness fees and the enforcement of subpoenas. Limits instances when an individual's health information may be disclosed. Makes conforming changes to G.S. 108A-70.15.

Section 15.8.(g). Amends G.S. 108A-63 to create the following new criminal offenses.

Proposed subsection (e) makes it illegal for a medical assistance provider to, or attempt to: 1) execute a "scheme or artifice" to defraud the Medical Assistance Program; or, 2) use false/fraudulent pretenses to obtain money or property owned by, or in the custody of, the Medical Assistance Program. *If the value of the health care benefits, items, or services received is \$100,000 or more, violation is a Class C felony; if the value is less than \$100,000, violation is a Class H felony.*

Proposed subsections (f) and (g) make it illegal for any person to knowingly and willfully solicit, receive, offer, or pay any remuneration: 1) for referring an individual to a person for the furnishing/arranging of services for which payment is made under the Medical Assistance Program; or, 2) for purchasing, leasing, ordering, or arranging therefore an item for which payment is made under the Medical Assistance Program. Contracts between the State and a public or private agency responsible for provider referrals are exempt. *Violation of either subsection is a Class I felony, pursuant to amended G.S. 108A-63(c).*

Section 15.8.(h). Provides that section 15.8 becomes effective December 1, 2007.

ASSUMPTIONS AND METHODOLOGY:

General

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing, or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

Department of Correction – Division of Prisons

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,¹ and represent the total number of beds in operation, or authorized for construction or operation as of December 6, 2006. Official Department of Correction capacity projections also assume the General Assembly will fund 500 additional prison beds, generated by partial double-celling of the future Tabor City facility (inmate admission FY 2008-09). However, Fiscal Research does not include these 500 beds in capacity estimates (row two), since these beds have not been authorized for funding.

Based on the most recent population projections and estimated bed capacity, *there are no surplus prison beds available for the five-year fiscal note horizon or beyond.* Therefore, the number of *additional beds needed* (row five) is *always equal to* the projected number of *additional inmates* resulting from a bill (row four). Rows four and five in the chart demonstrate the impact of (bill number). As shown, the Sentencing Commission estimates that this specific legislation will add (total) inmates to the prison system by the end of FY 2011-12.

	<u>June 30</u> <u>2008</u>	<u>June 30</u> <u>2009</u>	<u>June 30</u> <u>2010</u>	<u>June 30</u> <u>2011</u>	<u>June 30</u> <u>2012</u>
1. Projected No. of Inmates Under Current Structured Sentencing Act ²	39,621	40,236	41,021	41,848	42,718
2. Projected No. of Available Prison Beds (DOC Expanded Capacity)	38,505	39,353	39,353	39,353	39,353
3. Projected No. of Beds Over/Under Inmate Population	-1,116	-883	-1,668	-2,495	-3,365
<i>4. Projected No. of Additional Inmates <u>Due to this Bill</u> ³</i>	<i>N/A</i>	<i>3</i>	<i>8</i>	<i>8</i>	<i>8</i>
<i>5. No. of Additional Beds Needed Each Fiscal Year Due to this Bill</i>	<i>N/A</i>	<i>3</i>	<i>8</i>	<i>8</i>	<i>8</i>

POSITIONS: It is anticipated that by FY 2011-12, approximately 3 positions would be needed to supervise the additional inmates housed under this bill. This position total includes security, program, and administrative personnel at a ratio of approximately one employee for every 2.5 inmates. This ratio is the combined average of the last seven prisons opened by DOC – two of the prisons were medium custody and five were close custody.

FISCAL IMPACT BEYOND FIVE YEARS: Fiscal notes examine a bill’s impact over a five-year horizon, through FY 2011-12. However, when information is available, Fiscal Research also attempts to quantify longer-term impacts. Accordingly, the chart below illustrates the projected number of available beds given current conditions; the projected number of additional inmates due to HB 1473 (7th edition); and, the estimated number of new beds required each year through FY 2015-16.

¹ Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of SOC) and 50 (SOC) square feet per inmate.

² The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in December 2006.

³ Criminal penalty bills effective December 1, 2007 should not affect prison population and bed needs until FY 2008-09, due to the lag time between offense charge and sentencing - 6 months on average. No delayed effect is presumed for the Court System.

	<u>June 30</u> <u>2013</u>	<u>June 30</u> <u>2014</u>	<u>June 30</u> <u>2015</u>	<u>June 30</u> <u>2016</u>
1. Available Beds (Over/Under) Under Current Structured Sentencing	-4,234	-5,117	-5,996	-6,866
2. <i>Projected No. of Additional Inmates Resulting From (Bill Number)</i>				
3. <i>Estimated No. of New Beds Required Under (Bill Number)</i>		<i>Cannot be determined</i>		

CONSTRUCTION: Construction costs for new prison beds, listed in the following chart, are derived from Department of Correction cost range estimates (FY 2006-07) for each custody level, and assume Expanded Operating Capacity (EOC). Figures represent the midpoints of each range.

As shown, there are two primary options for prison bed construction: 1) a “stand alone,” or entirely new institution;⁴ or, 2) an addition within or adjacent to the perimeter of an existing institution, termed an “add-on.”⁵ Cost estimates for “add-on” beds are based upon a prototypical design, and assume that program/core support from the base institution will support 500 additional close or medium custody inmates, or 250 additional minimum custody inmates. “Add-on” costs are lower, relative to “stand-alone,” due partly to the usage of existing sites and infrastructure.

Estimated Construction Cost per Custody Level, FY 2006-07

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>
Cost Per Bed: EOC “Stand Alone”	\$56,000	\$63,000	\$109,000
Cost Per Bed: EOC “Add-On”	\$52,000	\$39,000	\$71,000

Construction costs are shown as *non-recurring costs in the “Fiscal Impact” table* (p.1). An annual inflation rate of eight percent (8.0%) is applied to these base costs.⁶ As illustrated (p.1), these costs also assume that funds to construct beds at a “stand alone” facility should be budgeted four years in advance, since building a prison typically requires four years for site selection, planning, design, construction, and occupancy. The overall duration for facility addition (“add-on”) is shorter, requiring that funds be budgeted three years in advance.

For Section 15.8 of HB 1473, given an increase of 8 inmates, bed provision through construction of a “stand alone” facility could cost approximately \$544,320. Provision through “add-on” could cost approximately \$336,960

OPERATING: Operating costs are based on actual FY 2005-06 costs for each custody level, as provided by the Department of Correction. These costs include security, inmate programs, inmate costs (food, medical, etc.), and administrative overhead costs for the Department and the Division of Prisons. A three percent (3.0%) annual inflation rate is applied to these base costs, as shown in the *recurring costs estimate in the “Fiscal Impact” table* (p.1).

⁴ New, “stand alone” institution built for Expanded Operating Capacity; single cells are assumed for close custody, and dormitories are assumed for medium and minimum custody (occupancy no greater than 130% of SOC).

⁵ Close and medium custody “add-on” facilities are built within the perimeter of an existing 1,000-cell Close Security Institution; a minimum custody “add-on” is built adjacent to an existing perimeter. Add-on facilities built for EOC employ the same custody configurations as “stand alone” (i.e. single cells for close custody, and dorms for medium and minimum custody levels).

⁶ Office of State Construction, March 24, 2006.

Daily Inmate Operating Cost per Custody Level, FY 2005-06

<u>Custody Level</u>	<u>Minimum</u>	<u>Medium</u>	<u>Close</u>	<u>Daily Average</u>
Daily Cost Per Inmate	\$54.81	\$70.83	\$79.72	\$66.87

For Section 15.8 of HB 1473 (7th edition), the average cost per bed was used since penalties for the most part remain at lower levels of Class H and I. Operating costs of \$232,821 are anticipated for 8 new beds by 2009/10.

Methodology for Prison Bed Estimates

The following is the Sentencing Commission's analysis of the affect of Sect 15.8. The Commission could not estimate population growth beyond FY 09/10 but small growth in population is likely

New Class C and Class H felonies

The proposed bill would revise G.S. 108A-63 to state that a "scheme or artifice" to conduct Medical Assistance Provider Fraud is a Class C felony where the value of benefits, items, or services is \$100,000 or more and a Class H felony where the value of benefits, items, or services is less than \$100,000.

In FY 2005/06, there were 5 Class I convictions under G.S. 108A-63. Of these 5 convictions, the value of the medical assistance provider fraud is unknown and it is not clear if any of the 5 would constitute a "scheme or artifice" as defined in the proposed bill. All five judgments imposed restitution in amounts less than \$100,000. It is assumed that the intent is to create a new offense distinct from the existing offenses. As a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many offenders might be sentenced under the proposed bill.

Under Structured Sentencing, with the exception of extraordinary mitigation, all Class C offenders are required to receive an active sentence. In FY 2005/06 the average estimated time served for an offender convicted of a Class C offense was 95 months. If, for example, there was one conviction for this offense per year, this bill would result in the need for one additional prison bed the first year and two additional prison beds the second year.

In FY 2005/06, 34% of Class H convictions resulted in active sentences, with an average estimated time served of 11 months. If, for example, there were three Class H convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and two additional prison beds the second year.

Expand scope and create new Class I felonies

The proposed bill would make it a felony for any person to knowingly and willfully solicit or receive or offer or pay any remuneration (including any kickback, bribe, or rebate) in return for a referral of any individual to a person for the furnishing of any item or service for which payment may be made through the Medical Assistance Program, or in return for the purchase, lease, order, or arrangement to purchase, lease, or order, any good, facility, service, or item for which payment may be made through the Medical Assistance Program. A defendant could be convicted under these subsections only if the conduct also violated the federal medical assistance fraud provisions of 42 U.S.C. 1320a-7b(b) and was not protected as an exception to that statute under 42 C.F.R. 1001.952. The offenses also except from their prohibitions persons conducting referrals pursuant to a contract between the State and a public or private agency. Violation of either subsection would be a Class I felony. pursuant to G.S. 108A-63(c).

Since the proposed G.S. 108A-63(f) creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. In FY 2005/06, 15% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. If, for example, there were twelve Class I convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and four additional prison beds the second year.

Since the proposed G.S. 108A-63(g) creates a new offense, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. In FY 2005/06, 15% of Class I convictions resulted in active sentences, with an average estimated time served of 7 months. If, for example, there were twelve Class I convictions under this proposed bill per year, the combination of active sentences and probation revocations would result in the need for one additional prison bed the first year and four additional prison beds the second year.

Fiscal Research assumes the following minimum growth in prison beds due to Section 15.8 based on “what if” scenario for small number of new convictions

Prison Beds –HB 1473/ Section 15.8

Offense	07/08	08/09	09/10	10/11	11/12
New Class C	0	1	2	2	2
New Class H	0	1	2	2	2
Expanded/New Class I	0	1	4	4	4
TOTAL	0	3	8	8	8

Department of Correction – Division of Community Corrections

For felony offense classes E through I and all misdemeanor classes, offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Intermediate sanctions include intensive supervision probation, special probation, house arrest with electronic monitoring, day reporting center, residential treatment facility, and drug treatment court. Community sanctions include supervised probation, unsupervised probation, community service, fines, and restitution. Offenders given intermediate or community sanctions requiring supervision are supervised by the Division of Community Corrections (DCC); DCC also oversees community service.⁷

General supervision of intermediate and community offenders by a probation officer costs DCC \$1.96 per offender, per day; no cost is assumed for those receiving unsupervised probation, or who are ordered only to pay fines, fees, or restitution. The daily cost per offender on intermediate sanction ranges from \$7.71 to \$14.97, depending upon sanction type. Thus, assuming intensive supervision probation – the most frequently used intermediate sanction – the estimated daily cost per intermediate offender is \$14.97 for the initial six-month intensive duration, and \$1.96 for general supervision each day thereafter. Total costs to DCC are based on average supervision length and the percentage of offenders (per offense class) sentenced to intermediate sanctions and supervised probations.

Given HB 1473 creates new offenses, there could be a small cost for supervision of new offenders put on probation.

⁷ DCC incurs costs of \$0.69 per day for each offender sentenced to the Community Service Work Program; however, the total cost for this program cannot be determined.

Department of Justice

DOJ assumes the need for a five person civil team to implement Section 15.8 including one Attorney III, two Attorney IIs, one paralegal, and one auditor.

Costs are estimated at \$655,485 in Year 1, offset by federal receipts, reducing the cost to \$193,871. Total cost in 08/09 would be \$566,322. Receipts would reduce the state amount to \$111,581. The five year cost is shown in the Fiscal Impact Table on Page 1 of the Note.

The DOJ justification, which FRD believes is reasonable, is shown below

1. Mandated Duties

The proposed North Carolina qui tam act would mandate that the Department of Justice engage in new duties including the following:

- a. Accept service of filed qui tam actions. G.S. § 108A-70.17(b)
- b. Review the action to determine whether or not to intervene. G.S. § 108A-70.17(b)
- c. Maintain information under seal. G.S. § 108A-70.17(b)
- d. Move the court for extensions of the seal as necessary. G.S. § 108A-70.17(c)
- e. Intervene or notify the court of its declination. G.S. § 108A-70.17(d)
- f. Upon intervention, have primary responsibility for prosecuting the action. G.S. § 108A-70.A(a)
- g. Appear in court and defend any motions to dismiss made over the objection of a relator. G.S. § 108A-70.A(b)
- h. Settle the action and defend the settlement in court if the relator objects to the settlement. G.S. § 108A-70.A(c)
- i. Determine the extent of participation of the relator. G.S. § 108A-70.17A(d)
- j. Negotiate or litigate the percentage of the proceeds to which the relator is entitled as an award. G.S. § 108A-70.17B

These additional duties cannot be carried out effectively without funding for additional staff.

2. Increased Workload

Virginia's qui tam statute became effective in 2003, and they have already opened 60 cases. Tennessee's qui tam statute became effective in 2001, and they have opened over 100 qui tam cases. We anticipate that at least that many will be filed in North Carolina. These filings will require a sufficient number of staff to be able, at a minimum, to review the filings for merit in a timely manner in order to make the required determination of whether the state should intervene. They will need to track the progress of cases in which the state intervenes. They will also need to track the progress of cases in which the state does not intervene in order to reassess whether the state should intervene at a later date. The evidence in these cases is typically voluminous. The civil staff will have to have or develop expertise in the area of qui tam law and well has health care fraud, which can both be complex areas. This can better be done by someone who is dedicated full time to these cases.

3. Increased Recoveries Seen by Other States With Civil Positions

The establishment of a civil team will allow the Medicaid Fraud Control Unit to actively pursue qui tam cases and increase recoveries. This is generally shown by the experience of other states that have enacted qui tam provisions, which includes examples as follows.

Virginia created five civil positions in the Virginia Medicaid Fraud Control Unit. These five positions consist of a supervising attorney, two mid-level attorneys, an auditor, and a paralegal. Since 2005 Virginia's qui tam recoveries have totaled more than \$24 million.

Tennessee has two attorneys, one paralegal, and an auditor on contract working full time on qui tam cases. Tennessee's qui tam recoveries have totaled more than \$19 million.

California enacted a qui tam act in 1987 but only created one civil position. From 1987 until 1999, the California Medicaid Fraud Control Unit was not able to do more than minimal tracking to keep up with federal qui tam actions. They were not able to take any meaningful independent action. In 1999 their civil unit was increased to 40 positions. With those resources, California was able to establish itself as a national leader in qui tam cases. Their qui tam recoveries may well reach \$1 billion next year.

On the other hand, states that enacted qui tam provisions but did not fund civil positions or at most only allocated one or two positions to handle the qui tam cases have had lower recoveries. In two instances where no positions were allocated there have been no recoveries under their state false claims acts to date.

4. Increased Likelihood of Intervention

Having a staff that is dedicated to and expert in the area of qui tam and health care fraud law will increase the likelihood that they will recognize meritorious qui tam cases and have sufficient resources to intervene. Recoveries in federal qui tam cases are substantially higher in cases in which the government intervenes than in cases in which the government does not intervene. As of 2003, recoveries in federal qui tam actions in cases in which DOJ intervened totaled \$7.51 billion; whereas, recoveries in cases that were declined totaled \$362 million. Likewise, it should be expected in state qui tam cases that recoveries in cases in which the state intervenes will be substantially higher than in cases in which the state does not intervene. Therefore, providing adequate staffing should lead to more cases in which the state can intervene, which should in turn lead to more dollars recovered.

Further, if the MIU intervenes, the relator's share is capped at 25% of the proceeds of the action. G.S. § 108A-70.17B(a). If the MIU does not intervene, it is unlikely that the case would go forward, but if the case did go forward and was successful, the relator could recover up to 30% of the proceeds of the action. G.S. § 108A-70.17B(b). The higher the percent of the proceeds that goes to the relator, the less the percentage of the proceeds that goes back to the state Medicaid Program or school fund.

5. Participation in NAMFU Qui Tam Working Group

The National Association of Medicaid Fraud Control Units (NAMFCU) has established a working group that oversees all national qui tam investigations that involve Medicaid. The group is composed of representatives of all states that have enacted qui tam provisions. The group meets periodically to discuss national investigations and assigns two members to supervise each investigation. Establishing a North Carolina civil team will allow North Carolina to fully participate in the qui tam working group and stay abreast of investigation developments and ensure that North Carolina is represented in group discussions.

6. Staffing Compared to Other States

There are Medicaid Fraud Control Units (MFCU) in 48 states and the District of Columbia. They range in size from the largest, which is New York with a staff of over 300 investigating a Medicaid program with a budget of over \$44 billion, to the smallest, which is Wyoming with a staff of 4 investigating a

Medicaid program with a budget of approximately \$396,000. North Carolina is in the middle range. A September 2006 comparison of eleven mid range states in which the Medicaid programs expend between \$14.2 billion to \$5 billion is as follows:

DOJ Table 1. Ranked by Medicaid Budget (Highest to Lowest)⁸

	STATE	MEDICAID BUDGET	TOTAL STAFF
1	Pennsylvania	\$14.2 Billion	50
2	Ohio	\$11.0 Billion	47
3	Illinois	\$12.2 Billion	67
4	Tennessee	\$8.7 Billion	37
5	North Carolina	\$8.1 Billion	29
6	New Jersey	\$8.0 Billion	43
7	Michigan	\$8.0 Billion	40
8	Georgia	\$7.7 Billion	53
9	Louisiana	\$5.6 Billion	48
10	Massachusetts	\$5.3 Billion	32
11	Virginia	\$5.0 Billion	39

DOJ Table 2. Ranked by MFCU Staff (Highest to Lowest)

	STATE	TOTAL STAFF	MEDICAID BUDGET
1	Illinois	67	\$12.2 Billion
2	Georgia	53	\$7.7 Billion
3	Pennsylvania	50	\$14.2 Billion
4	Louisiana	48	\$5.6 Billion
5	Ohio	47	\$11.0 Billion
6	New Jersey	43	\$8.0 Billion
7	Michigan	40	\$8.0 Billion
8	Virginia	39	\$5.0 Billion
9	Tennessee	37	\$8.7 Billion
10	Massachusetts	32	\$5.3 Billion
11	North Carolina	29	\$8.1 Billion

As shown by Table 1 above, of these eleven states, North Carolina is the fifth largest state in terms of the size of its Medicaid Program budget. However, as shown by Table 2, North Carolina is last in terms of the size of its MFCU staffing. Additional civil and criminal positions will help the MIU better oversee an \$8.1 billion Medicaid program.

⁸ I have not verified current budget figures reported for Massachusetts and Louisiana.

Judicial Branch

The Administrative Office of the Courts provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

For HB 1473, Section 15.8, the AOC expects the following sections of the provision to impact the courts but the AOC does not have the data to estimate costs.

- *Increased civil penalties could increase number of appeals to superior court contesting these penalties*
- *New procedures for investigating fraud cases by the AG could result in additional superior court time and cost*
- *New felonies in bill could create additional costs in superior court as well as costs for juries and indigent defense*

SOURCES OF DATA: Department of Correction; Judicial Branch; North Carolina Sentencing and Policy Advisory Commission; Department of Justice and Office of State Construction.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Jim Mills

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: May 30, 2007



Signed Copy Located in the NCGA Principal Clerk's Offices