

NAAG Gazette

A Newsletter of the National Association of Attorneys General

OCTOBER 22, 2007



LAWRENCE WASDEN

President's Message

As President of the National Association of Attorneys General, it is my pleasure to present to you the inaugural edition of the NAAG Gazette, the first biweekly newsletter written and produced by the NAAG staff to provide legal, legislative and policy news for Attorneys General and their staffs.

In this edition, you will read what's hot on Capitol Hill, gain insight into the workings of the U.S. Supreme Court, understand why bankruptcy should be a priority for Attorneys General and meet some of the NAAG staff members who work hard to meet your needs as legal and policy experts in their respective areas.

This newsletter will also serve as a vehicle to update you periodically on the status of my presidential initiative, "Providing Effective Energy Counsel to State Government; An Attorney General's Perspective." I have planned a two-day conference in Coeur d'Alene, Idaho, May 6-7, 2008, to discuss the nation's energy industry, its impact on the environment, its effects in the marketplace and current regulatory efforts.

In the first four months of my NAAG presidency, I have reached out to a wide group of representatives for their perspectives on energy issues. I have held conference calls with former Attorneys General, policy analysts and the environmental community.

In addition, I have met with the staff from the National Governors

Association to coordinate our efforts, where possible, with regard to NGA's renewable energy initiative. I have hosted discussions with representatives of many major energy producers: the petrochemical producers and the mining community, as well as the nuclear power producers and other electric utility representatives.

This year also holds special meaning as we celebrate NAAG's 100-year anniversary. This historic milestone presents us with a unique opportunity to reflect on our history and acknowledge past accomplishments. It also provides us with an invaluable opportunity to consider our vision and direction for the future.

As the Association moves forward, I encourage you to take advantage of the staff and resources offered by NAAG. I must thank the entire NAAG staff for their dedication, professionalism and varied expertise in law, public policy, communications, finance and accounting, human resources and IT. Their contributions have been enormous in ensuring that our voices are heard on Capitol Hill and within the halls of nearly every federal agency located in the nation's capital.

I would like to thank all of my colleagues who have made my transition as president seamless. It is an honor and privilege to serve as president of one of the country's oldest and most prestigious legal associations. I look forward to working with all of you in the coming months.

Lawrence Wasden is Idaho's 32nd Attorney General. He was elected in 2002 and re-elected in 2006. In June 2007, he was elected President of NAAG. His term ends June 2008.



State Attorneys General Offices and the Certiorari Process

DAN SCHWEITZER, SUPREME COURT COUNSEL

The Solicitor General of the United States is often referred to as "the Tenth Justice" because of the influence he exerts and the respect the U.S. Supreme Court accords the office. Alas, no state attorney can claim a similar status. States speak to the Court not with one voice, but with a multitude of voices; and few state attorneys appear before the Court more than a few times

(CONTINUED ON PAGE 2)

ALSO IN THIS ISSUE

NAAG Employee Spotlight	3
Legislative Update	3
Show Me the Money! Why Pay Attention to Bankruptcy?	5
The Internet, Cybercrime and the Supreme Court	6
MFCUs Fight Fraud and Abuse	7
Professional Opportunity.....	9

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

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NAAGAZETTE

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each year. That said, the states still hold a privileged position in the Court. This can be seen by looking at rarely studied statistics on the states' success in obtaining Supreme Court review.

It is common knowledge that the Court grants few petitions for writs of certiorari. In paid cases, the Court grants approximately 4% of the petitions filed; in *in forma pauperis* cases, the figure is about 0.2%¹. Does this mean a state Attorney General considering whether to seek Supreme Court review faces only a one in 25 shot at succeeding? The answer is a resounding no.

My review of all cert petitions filed by state Attorneys General offices during the 2001 to 2006 Terms reveals that state petitions were granted 22% of the time. The table below shows the year-by-year results²:

	Petitions Filed	Granted	Denied	Held or GVRed	Success Rate
2006 Term	55	9	42	4	18%
2005 Term	81	10	57	14	15%
2004 Term	82	23	53	6	30%
2003 Term	84	14	57	13	20%
2002 Term	94	24	60	10	29%
2001 Term	75	13	58	4	18%
TOTAL	471	93	327	51	22%

Although the states' petitions were not as likely to be granted as petitions filed by the United States (which files far fewer petitions each year than the states do collectively and is more selective in choosing its cases), the states' success rate is far higher than that of private parties. The obvious reason for this is that state cases raise issues of fundamental importance to our legal system and our constitutional structure. As a consequence, whereas the success of private cert petitions almost always depends on whether they demonstrate a circuit split, the same is not true of the states' cert petitions. When, for example, a federal court of appeals refuses to adhere to the limits imposed by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) or holds an important state law preempted, the Court will often intervene to ensure that state prerogatives are not unduly trampled upon.

A final piece of evidence of the important role states play in the certiorari process is the success rate of amicus briefs filed by states in support of cert

¹ Robert L. Stern, et al., *Supreme Court Practice* (8th ed. 2002), at 59-60.

² The information is derived from my review of the summaries of all paid cert petitions that appear in U.S. Law Week's *Supreme Court Today*. For the sake of clarity, I deemed a petition as falling within a particular Term if the case number began with that Term's year. For example, all petitions with case numbers beginning 03 were deemed to be in the 2003 Term. The success rate excludes petitions that were held pending the disposition of a granted case or that resulted in the Court granting the petition, vacating the judgment below and remanding for reconsideration in light of a recent opinion (so-called "GVRs").

petitions. In the 2001 through 2006 Terms, the states filed 110 amicus briefs that asked the Court to grant a pending cert petition. The Court granted certiorari in 46 of those cases – meaning the states had a success rate of 42%. (The states’ success rate is 47% if the prior five Terms are included.³) Again, this is an extraordinary figure when compared to the 4% success rate of paid petitions in general.

The lesson to be learned is that states have a major voice before the U.S. Supreme Court, and have a genuine opportunity to use the Court to move the law in favorable directions. This is not to suggest that states file cert petitions (or supporting amicus briefs) willy nilly. The states’ credibility in the Court depends on their filing cert petitions only when there is a plausible case for Supreme Court review. States should always consider the likelihood and implications of an adverse ruling. But, if state Attorneys General offices choose their cases wisely, the U.S. Supreme Court can be a valuable “tool” in furthering their core missions of enforcing the law and protecting the public interest.

Legislative Update

BLAIR TINKLE, LEGISLATIVE DIRECTOR



The NAAG Legislative Director, in conjunction with other NAAG Project Counsel, assists NAAG members by providing appropriate analysis and accurate status assessment of legislation pending in Congress that is relevant to state Attorneys General. In order for Attorneys General and their staff to make informed policy decisions on federal legislation, it is imperative that they have a full understanding of what is contained in bills, as well as a complete awareness of procedural, practical, and political issues surrounding legislation. Although the Legislative Director does not advocate policy positions to Attorneys General, nor do project counsel at NAAG, NAAG staff is here to facilitate all aspects of relaying NAAG positions on federal legislation to Congress as directed by the membership.

This month’s Legislative Update focuses on the most current issues in Congress deserving attention of state Attorneys General and is not intended to be an exhaustive overview of all bills affecting state Attorneys General. In effect, this regularly feature will inform NAAG members about “what’s hot” in Congress.

It should be noted that the current atmosphere in Congress has made it somewhat difficult to move individual bills. Although the Democratic majority in the House is large enough to carry a mandate at times and move certain bills, the

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³ These figures are derived not from a review of the Court’s docket, but from my longstanding role facilitating the circulation of amicus briefs. It is very rare for a state to file an amicus brief in the Supreme Court of which I am not aware. That is always a possibility, however, so I cannot assert that these figures are definitive.

DENNIS CUEVAS

was appointed NAAG’s Consumer Protection Project Director and Counsel in October 2006. Before his recent appointment, he was NAAG’s Consumer Protection Project Manager and Counsel for nine years. Prior to joining NAAG, Dennis was a contract attorney with the U.S. Secret Service, where he handled the administrative forfeiture of property derived from bank fraud, credit card fraud, and money laundering.



As the head of NAAG’s Consumer Protection Project, Dennis works to improve the enforcement of state and federal consumer protection laws by state Attorneys General, as well as supports multistate consumer protection enforcement efforts. In addition, the Project promotes information exchange among the states with respect to investigations, litigation, consumer education, and both federal and state legislation. The project organizes two Consumer Protection conferences annually and sponsors other enforcement and training conferences.

The consumer protection work of state Attorneys General over the past year has run the gamut from telemarketing to telecommunications and from prescription drugs and privacy to price-gouging.

Dennis received a B.A., in International Studies, from Virginia Polytechnic Institute and State University, where he was a State Council of Higher Education for Virginia scholarship recipient. Dennis received his law degree from The Thomas M. Cooley Law School in Lansing, Michigan, where he was a writer for the Michigan Opinion Notes section of the *Michigan Bar Journal*. He also worked as a law clerk for Legal Aid of Central Michigan. He is a member of the District of Columbia and Georgia bars.

Senate is clearly facing challenges advancing legislation, both procedurally and politically.

As most are aware, the Senate requires a vote of 60 Senators to end debate and force a vote on bills, effectively blocking the filibuster. In the previous 109th Congress, the 55-45 Senate Republican majority oftentimes found it difficult to find five Democrat Senators to join with their majority and move bills to a vote. Likewise, in the current 110th Congress, the 51-49 Senate Democrat majority is having similar difficulties garnering the necessary nine Republicans to move bills. In addition, Senate procedures allow for a single Senator to put an anonymous hold to halt a bill for any reason.

SUBPRIME MORTGAGE CRISIS

Lawmakers in both the House and Senate look to resolve the “subprime mortgage crisis” and epidemic of foreclosures, but an early start to the 2008 elections threatens to slow down movement of many legislative initiatives.

On the political front, the 2008 presidential election is already well underway and early-targeted House and Senate seats have created a difficult climate for advancing legislative initiatives. Nonetheless, there are issues of interest to state Attorneys General that are receiving enough media and public attention that Congress may be forced to act.

Both chambers of Congress are currently addressing the issue now known by most media as the “subprime mortgage crisis” and epidemic of foreclosures nationwide. House Financial Services Committee Chairman Barney Frank (D-MA) has announced legislation toughening standards for mortgage underwriting and lending practices. It has been reported that the draft language is currently not being challenged by the lending industry (raising eyebrows in the consumer protection community), but the bill has yet to be introduced. The bill will be distributed to state Attorneys General by NAAG staff when it is available.

Similarly, it is likely that Senate Banking Committee Chairman Christopher Dodd (D-CT) would introduce a bill addressing the subprime lending issue. Senators Hillary Clinton (D-NY), Barack Obama (D-IL) and Charles Schumer (D-NY) have introduced bills addressing this issue and some action is anticipated this fall or early next year.

The issues of lead standards and lead tainted toys and other children’s products are also attracting significant media and public attention, and are therefore likely to generate a Congressional response. The Senate recently held hearings

on the issue and a bill by Senator Mark Pryor (D-AR) has been reported as the most comprehensive bill addressing this initiative to date. The Pryor bill is most likely to be the vehicle in the Senate, but there are also bills in consideration by Senators Clinton, Obama, and Amy Klobuchar (D-MN). The House is also expected to address this issue and it seems likely that some legislation will move in the near future.

Regarding tobacco issues and Congressional action, President Bush recently vetoed a bill addressing SCHIP, a children’s health insurance measure for which the financing mechanism would have increased the federal tobacco excise tax (cigarette tax) from \$0.39 a pack to \$1.00. The House is scheduled to attempt to override the President’s veto in October 2007. House Democrats are hopeful to gain sufficient Republican support to sustain the two-thirds (or 290 votes) necessary to override the veto. However, the bill passed the House originally by a vote of 265-159. Depending upon the outcome of the veto override, the excise tax increase to fund SCHIP could likely be addressed again soon.

Senator Edward Kennedy (D-MA) announced last summer that his FDA regulation of tobacco bill would be passed in Committee and moved to the Senate floor before the August break and would be heard by the full Senate this fall. The bill did pass committee before the August break, is pending full Senate consideration, and could see floor action at any time.

On another tobacco related note, a NAAG letter, signed by more than 50 Attorneys General, was sent to Congress in support of the PACT Act, a measure sponsored by Senators Herb Kohl (D-WI), Arlen Specter (R-PA), Patrick Leahy (D-VT), Jon Kyl (R-AZ), Charles Schumer (D-NY) and Susan Collins (R-ME), to curtail the illegal online sales of tobacco products.

Another issue gaining momentum in the last several weeks is the restoration of federal funding of child support enforcement monies cut by the “Deficit Reduction Act of 2005” (DRA). Several measures are pending in Congress to restore child support incentive matching funds that were cut by the DRA. In early October 2007, a letter signed by more than 500 interested groups and jurisdictions was sent to the Hill in support of restoring these funds. This legislation, with 47 bipartisan co-sponsors in the House and 23 bi-partisan co-sponsors in the Senate, could see action in Congress soon, perhaps as part of the SCHIP veto override in October 2007.

Another topic currently of interest is the \$20 billion College Cost Reduction and Access Act that was recently signed by President Bush. The Act contains provisions that offer loan forgiveness for those who have held public service jobs for

more than ten years, potentially affecting state Assistant Attorneys General.

On other issues important to state Attorneys General, NAAG staff continue to track pending legislation addressing the following issues:

- ◆ Data Security/Security Breach/Breach Notification/ID Theft
- ◆ Do-Not-Call (particularly as it relates to the 5-year re-registration issue and recorded political campaign calls)
- ◆ Auto Salvage
- ◆ Household Goods Movers
- ◆ Sale of Cell Phone Records
- ◆ Anti-Pyramid Schemes
- ◆ Rent-To-Own
- ◆ Internet Pharmacies
- ◆ Airline Passengers Rights
- ◆ Health Records Information Technology/Privacy
- ◆ Food Safety Labeling
- ◆ Internet Gambling Regulation
- ◆ Hate Crimes
- ◆ Asbestos Fund
- ◆ Free Trade/Fast Track
- ◆ Nuclear Waste Storage
- ◆ Bankruptcy
- ◆ Grants

Show Me the Money! Why Pay Attention to Bankruptcy?

KAREN CORDRY, BANKRUPTCY COUNSEL



Bankruptcy is rarely viewed as a priority issue for Attorneys General offices. Yet, if the focus is broadened to include collection and enforcement of judgments generally, the importance quickly becomes clear. Pursuing cases to judgment without enforcing those judgments is a waste of time for the government, makes the process a cruel hoax to

the victims, and destroys the deterrent effect of the prosecution. Conversely, there are two values served by an aggressive enforcement and collections program. First, in true revenue areas, such as taxes, student loans, benefit overpayments, health care payments, and government contracts, careful advance planning of transactions and a thorough, proactive plan for enforcing the terms of those obligations can be extremely cost-effective.

While bankruptcy is often seen as disruptive of collection efforts, the Bankruptcy Code is, at bottom, quite solicitous of government revenues and can even prove helpful. Chapter 13 cases, for instance, are a court-supervised repayment program that requires full payment of the principal of most taxes without any action by the government except to file a claim. Compensation of Chapter 13 trustees comes from payments by debtors, relieving the government of the costs to pursue more traditional methods such as foreclosure or garnishment.

Much of the other collection activity under the Code is routine and lends itself to standard forms and procedures prepared by law clerks and paralegals. A well thought-out, assertive collection strategy can result in recovering many times the cost of any extra staff needed for such an effort. Once put in place, such a program can have a continued upward impact on the effectiveness of state revenue collection efforts. Conversely, an inadequate collection program will likely lead to lower levels of general compliance by the public and lower the success rate of revenue enforcement in nonbankruptcy contexts.

Any problems in nonbankruptcy collections will be exacerbated in the bankruptcy arena because the Code rewards efforts to collect current taxes and downgrades collection efforts directed at “stale” taxes. Moreover, a state that does not have a well thought-out plan to deal with bankruptcy will likely lose large amounts of revenue, either by failing to meet the swift and stringent procedural requirements of the Code, or by failing to recognize and oppose the creative efforts of debtors to “push the envelope” of what the Code allows. Thus, an unwary state may find debtors taking great liberties with its obligations if the state does not actively monitor and participate in cases. In short, a vigilant program for dealing with bankruptcy issues is crucial to assuring the integrity of the overall revenue collection process of the state.

(CONTINUED ON PAGE 6)

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The second reason bankruptcy is important is its relationship to the many other aspects of the Attorneys General's offices that are *not* specifically revenue driven – those referred to as police and regulatory matters.¹ It is not enough to fully investigate, litigate, and/or settle a case and obtain far-reaching relief if the judgment or consent decree is put in a drawer with the assumption that it will enforce itself. It is as much the government's job to enforce the order as to obtain it in the first place. Beneficiaries of those orders have a right to assume they will get what was ordered. If that doesn't happen, then victims will be victimized again, and defendants will realize that the orders they sign are mere pieces of paper that can be violated with impunity.

In short, to make a judgment meaningful, the government will have to act as a creditor. War is the last stage of diplomacy; bankruptcy is the last stage of debtor-creditor relations. Any defendant facing a large payment obligation or a substantial expenditure to bring a facility into compliance inevitably considers whether a bankruptcy filing will relieve it of those burdens. Settlement and/or compliance negotiations always proceed under the threat, spoken or implicit, that the defendant will file for bankruptcy if the terms are too harsh. If the government is uninformed about its rights and obligations under the Code, it is likely to unduly fear those threats credible and to settle for less than it needs to in order to avoid having the debtor file. Similarly, if there is a bankruptcy filing after a settlement, an unprepared government may view the bankruptcy as a "black hole" into which its judgment disappears, never to be heard from again. However, while bankruptcy presents serious challenges to governments, the Code protects their special needs in many ways to avoid having bankruptcy become a "haven for wrongdoers."

Finally, knowledge of the effects of bankruptcy must be part of an overall enforcement strategy. Structuring a settlement agreement or judgment correctly can greatly increase the chances that the government will be able to enforce that agreement in a bankruptcy. Careful and strategic thinking, up front, about how settlement actions will impact on a future bankruptcy case will benefit the government in deciding the precise wording of terms for a settlement – and may be the best incentive to convince a defendant that a bankruptcy filing will not serve its goals in any event. In short, one cannot

¹ While such matters often involve collecting money for victims, those funds do not inure to government, and enforcement is viewed as critical, whether or not collection is likely. A cost-benefit analysis that might be applied to tax collection is less important in regulatory matters.

effectively enforce the law without knowing about and deciding how to cope with bankruptcy. Since effective enforcement is at the heart of what Attorneys General do, their ability to function in the context of the federal bankruptcy system is an integral part of their powers and duties.

The Internet, Cybercrime and the Supreme Court

HEDDA LITWIN, CYBERCRIME COUNSEL



With the new U.S. Supreme Court term underway, it seems appropriate to discuss the cases involving cybercrime and Internet issues that have been granted certiorari so far. There are two such cases: one dealing with a federal law on child pornography that was partially struck down and the other addressing more tangentially Internet tobacco sales.

Possession of Child Pornography

We'll begin with a discussion of *U.S. v Williams*, as the Supreme Court will once again ponder attempts by Congress to prohibit child pornography. This time, it's a provision of the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today ("PROTECT") Act, which bans the pandering of "any material or purported material" in a way that "reflects the belief" or "is intended to cause another to believe" that the material is child pornography. The Court will have to decide if the Act is overly broad and thus unconstitutional on its face in violation of the First Amendment.

The facts of the case began with an undercover operation by the Secret Service aimed at combating online child exploitation. As part of that operation, Agent Timothy Devine engaged Michael Williams in a private Internet chat, during which Williams sent Devine a computer hyperlink with "good pics of her and me," referring to Williams' young daughter. Agents subsequently obtained and executed a search warrant at Williams' home, which resulted in a finding of child pornography on Williams' computer hard drives. Williams was charged and convicted on one count of pandering material causing belief that it is child pornography under the PROTECT Act and one count of possession of child pornography.

Williams filed a motion to dismiss the pandering charge on the grounds that the provision in the PROTECT Act was unconstitutionally overbroad and vague. While the motion was pending, a plea agreement was reached whereby Williams would plead guilty to both counts but reserve his right to appeal the pandering charge. He was sentenced to 60 months in prison for each charge to be served concurrently.

On appeal, the 11th Circuit found that the pandering provision abridges the freedom to engage in a substantial amount of lawful speech and was thus constitutionally overbroad. It also found that the provision failed to outline its restrictions with sufficient clarity to enable compliance. Williams' sentence on the pandering count was reversed. The court's ruling also rendered that provision of the PROTECT Act unenforceable in the 11th Circuit, which covers Florida, Georgia and Alabama.

Oral argument for the case is scheduled for October 30.

Internet Sales and Delivery of Tobacco Products

The other case, *Rowe v. New Hampshire Motor Transport Assn.*, Docket No. 06-0457, deals with Maine's Tobacco Delivery Law regulating the Internet sales and delivery of tobacco products. That statute, enacted in 2003 to curb cigarette sales to minors, requires retailers to use a carrier that will deliver a package only to the addressee and verify that the person receiving the package is old enough to buy tobacco. Additionally, Section 1555-D of the statute forbids anyone to knowingly deliver tobacco products to a Maine consumer if they came from an unlicensed dealer. Under the law, the person delivering the package is "deemed to know" that it contains tobacco products if the packaging indicates that tobacco products are contained or if the shipper appears on a list of unlicensed tobacco retailers maintained by the Attorney General of Maine.

The New Hampshire Motor Transport Association, representing air and motor carriers, sued the Attorney General of Maine, claiming that the Federal Aviation Administration Authorization Act (FAAAA), which preempts states from enacting laws related to a carrier's prices, routes or services, preempted Maine's Tobacco Delivery Law. The Association argued that Maine's law would impermissibly force carriers to alter their delivery practices in order to verify the age of the recipient. The U.S. District Court for the District of Maine agreed, and Maine appealed. The First Circuit Court of Appeals upheld the ruling, with the exception of the section that forbids carriers to knowingly deliver tobacco products, finding that requiring that carriers not act as knowing

accomplices does not cause them to modify their delivery practices.

The issue, then, before the Supreme Court is whether a state government is allowed to require companies that deliver Internet tobacco orders to verify the age of their recipients. Paul Stern, Deputy Attorney General in the Office of the Attorney General of Maine, submitted the brief for petitioners. An amicus brief, on behalf of California and 35 other states, was submitted by Laura Kaplan, Deputy Attorney General in the Office of the Attorney General of California, in support of Maine's position. No date has been set for oral argument.

MFCUs Fight Fraud and Abuse: Representing the Leaders in Health Care Fraud Enforcement

BARBARA L. ZELNER, COUNSEL, NATIONAL ASSOCIATION OF MEDICAID FRAUD CONTROL UNITS (NAMFCU)



According to a recent *USA Today* article, the Medicaid program has increased by more than 10% in the first six months of this year, the largest increase since 2001. More than a record \$300 billion dollars will be spent on this program in 2007. Such a dramatic growth is an increasing cause for concern for both state and federal officials. The

existence of fraud in the Medicaid program is detrimental to taxpayers, the program's financial stability and the quality of care provided to beneficiaries.

State Medicaid Fraud Control Units (MFCUs) lead the fight against fraud and abuse in the Medicaid program and offer state Attorneys General a leadership role in strengthening state health care fraud enforcement efforts. Forty-three of the 50 federally certified units are housed in the office of the state Attorney General. For the other seven states (Connecticut, the District of Columbia, Georgia, Illinois, Iowa, Tennessee and West Virginia), the MFCU operates from a separate state agency, but even in those jurisdictions, the MFCU works with staff in the Attorney General's office. This year, Idaho became the 49th state to establish a MFCU.

(CONTINUED ON PAGE 8)

The MFCUs are first and foremost state-based criminal law enforcement agencies that are funded 75% by the federal government and are responsible for investigating and prosecuting providers that defraud the Medicaid program. In addition, the MFCUs can investigate complaints of abuse or neglect against residents in long-term care and board and care facilities. When Congress created the MFCUs in 1977, it did so not only because of substantial evidence of fraud in the Medicaid program, but also because of horrendous evidence of nursing home abuse and victimization. The MFCUs are the only law enforcement agencies in the country that are specifically charged with investigating and prosecuting abuse and neglect of residents in nursing homes, other Medicaid funded health care institutions and board and care facilities.

Over the past ten years, the MFCUs have substantially increased their aggregate number of convictions and financial recoveries. For example, in Federal Fiscal Year (FFY) 1996, the MFCUs collectively obtained 871 convictions and recovered \$147.6 million dollars in court ordered restitution, fines, civil settlements and penalties. In FFY 2006, the MFCUs obtained 1,226 convictions and recovered more than \$1.1 billion dollars.

The National Association of Medicaid Fraud Control Units (NAMFCU) was founded in 1978 to provide a forum for the MFCUs for the mutual exchange of information, to foster interstate cooperation, and to improve the quality of Medicaid fraud and resident abuse investigations and prosecutions through training programs. The 50 MFCUs comprise the Association and are staffed by almost 2,000 attorneys, auditors, investigators and support staff. The majority of these employees work for their state Attorney General.

NAMFCU has developed high quality professional training that provides new MFCU employees with essential investigative and prosecutorial techniques and skills to conduct Medicaid fraud and resident abuse investigations. NAMFCU also provides state-of-the-art training on the latest fraud schemes. Such specialized Medicaid fraud training is not available elsewhere.

Since 1998, NAMFCU has conducted 27 *Introduction to Medicaid Fraud* training programs for approximately 1,200 MFCU employees. This introductory program is deemed mandatory training in many state Attorneys General offices. Additionally, NAMFCU has provided introductory training to individual states such as Illinois, Georgia, Texas and Florida in conjunction with significant Unit expansions in those states.

In addition to introductory training, NAMFCU offers MFCUs a *Practical Skills* training program that focuses on fraud scenarios in different specialty areas. The training is conducted in breakout-group format with substantial interaction between instructors and students. The training targets more experienced MFCU employees. NAMFCU held this training in Virginia this year and is planning for two programs in 2008, to be held in Florida and Colorado.

NAMFCU also holds an annual Directors Symposium in Washington, D.C. This program provides MFCU Directors with in-service training on MFCU grant requirements and provides a forum for learning about best practices in managing an MFCU. National trends in Medicaid fraud and resident abuse cases are also discussed.

Each year NAMFCU also co-sponsors two healthcare fraud programs with the American Bar Association. These seminars bring together state and federal prosecutors along with the defense and relator (“whistleblower”) bar to share information about national trends and cases.

In addition to its training programs, NAMFCU is available to provide support to MFCU staff by providing technical assistance. At a state’s request, NAMFCU will form a team of experienced MFCU staff to visit the state and review the requesting Unit’s structure, cases and its relationships with state/federal agencies. Several states have taken advantage of this opportunity, which is provided at no cost to the Attorney General’s office or state agency.

For many years, NAMFCU has provided the links necessary for individual MFCUs and their respective state Attorney General offices to coordinate Medicaid fraud multi-state cases and investigations. The Association’s Global Case Committee (GCC) meets quarterly to discuss existing and potential cases, policies, procedures and strategies that affect a particular case, but may also affect other cases as well. This Committee also develops specialized training about global cases and investigations for MFCU data analysts, attorneys, investigators and auditors. To date, NAMFCU coordinated multi-state settlements have returned \$2.3 billion dollars to the states. Currently, NAMFCU has 22 multi-state teams assigned to cases.

Two years ago, NAMFCU created a Qui Tam Subcommittee of the GCC to provide a forum for the increasing number of states that have adopted qui tam statutes modeled after the federal False Claims Act. The Subcommittee assigns intake teams to each newly filed under seal. The Subcommittee provides a vehicle for Attorneys General through their MFCUs to play a prominent role in multi-state cases. At the successful conclusion of each case, a model press release is sent to each participating state. Many Attorneys General use

the NAMFCU model press release to publicize the successful work of its MFCU.

Providing the public with information about the Medicaid fraud program is another important purpose of NAMFCU. To further that goal, NAMFCU maintains a website, <http://www.NAMFCU.net/>, which contains information about the history of MFCUs, past press releases, copies of the Association's *Medicaid Fraud Report* newsletter, as well as links to individual state Attorney General offices, the National Association of Attorneys General, and other organizations and federal agencies.

All MFCUs work closely with the United States Attorney and HHS-OIG offices in their respective states, along with other federal law enforcement agencies. There are active state-federal health care fraud task forces and working groups in many states and the MFCUs are active participants on these task forces and working groups.

In many states, MFCU staff provide statewide leadership in training local law enforcement to recognize, investigate, and prosecute resident abuse cases. MFCUs also sponsor training programs, while other MFCUs educate health care professionals, state long-term ombudsman and adult protective services staff. Individual MFCUs also offer training for health care workers in residential care facilities, group homes and hospitals, and for home health care aides to recognize and report resident abuse and neglect. Many MFCUs actively participate on state multi-agency task forces and working groups dealing with resident abuse. These task forces meet regularly to exchange information and consider legislation, training efforts and ways to improve public awareness on the subject of resident abuse.

This summer, NAMFCU submitted testimony, at the request of the U.S. Senate Special Committee on Aging about the role of the MFCUs in investigating and prosecuting abuse and neglect cases in long-term care facilities. Currently, a draft letter of support for the bipartisan Patient Safety and Abuse Prevention Act of 2007, a bill to establish a nationwide system of background checks for long-term care workers, is being circulated to MFCU Directors for consideration.

For 30 years, the Medicaid Fraud Control Units have played a national leadership role in detecting and prosecuting health care fraud and resident abuse. The Units have been successful in serving as a deterrent to health care fraud, in identifying program savings, in removing incompetent practitioners from the health care system and in preventing physical and financial abuse of residents in health care facilities.

Professional Opportunity

NAAG is seeking an Executive Director to manage the day-to-day legal and non-legal operations of its 50-person staff. The Executive Director serves all the Attorneys General and reports directly to the Executive Committee. The Executive Director will have oversight in the areas of program, financial and operational planning and management. The Executive Director will work with membership to advance the goals of the Association fostering interstate cooperation on legal and law enforcement issues, policy research and analysis of issues, and facilitating communication between the states' chief legal officers and all levels of government. The Executive Director must demonstrate strong leadership and maintain high ethical standards. Flexibility in a fluid environment, strong communication skills, creativity, and innovation are essential.

Qualified applicants must have a JD from an accredited law school; substantial experience managing professionals in a dynamic environment, and; substantial experience in a legal environment. Public sector or not-for-profit experience preferred but not required. Salary range: \$150,000-\$170,000 with excellent benefits. Submit resume with cover letter and salary history/requirements to: Scott Messing, NAAG, 2030 M Street, NW, 8th Floor, Washington DC 20036 or email:jobs@naag.org. A complete job description can be found at http://www.naag.org/executive_director.php. EOE

About NAAG

The National Association of Attorneys General (NAAG) was founded in 1907 to help Attorneys General fulfill the responsibilities of their office and to assist in the delivery of high quality legal services to the states and territorial jurisdictions. NAAG's mission is: "To facilitate interaction among Attorneys General as peers. To facilitate the enhanced performance of Attorneys General and their staffs." NAAG fosters an environment of "cooperative leadership," helping Attorneys General respond effectively - individually and collectively - to emerging state and federal issues.

The Association fosters interstate cooperation on legal and law enforcement issues, conducts policy research and analysis of issues, and facilitates communication between the states' chief legal officers and all levels of government. The Association's members are the Attorneys General of the 50 states and the chief legal officers of the District of Columbia, the Commonwealths of Puerto Rico (Secretary of

(CONTINUED ON PAGE 10)

Justice) and the Northern Mariana Islands, and the territories of American Samoa, Guam, and the Virgin Islands. The U.S. Attorney General is an honorary member.

NAAG's goals are to:

- ◆ Identify, produce, and disseminate key information related to the independence, scope, and management of the office of the Attorney General;
- ◆ Create and maintain a collegial network among the chief legal officers of the states and jurisdictions by providing a meeting ground for cooperation and learning;
- ◆ Promote cooperation and coordination on interstate legal matters to foster an even more responsive and efficient legal system for state citizens;
- ◆ Advise Attorneys General and their staffs of significant legal developments and emerging trends occurring in the states and federal government through information exchange, programs, and training;
- ◆ Increase citizen understanding of the law and law enforcement's role to ensure both protection of individual rights and compliance with the law;
- ◆ Influence the development of national and state legal policy through such means as Supreme Court advocacy training and dialogue with other national, state, and local policy makers and pursue policy objectives as determined by the membership.