

## Bipartisan, Bicameral Effort to Protect Health Benefits for School Children with Disabilities Launch

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John D. Dingell, Chairman

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### BIPARTISAN, BICAMERAL EFFORT TO PROTECT HEALTH BENEFITS FOR SCHOOL CHILDREN WITH DISABILITIES LAUNCHED TODAY

Legislation Would Also Strengthen Accountability in Use of Medicaid Funds

WASHINGTON, D.C. - U.S. Senators Edward Kennedy (D-MA) and Gordon Smith (R-OR) and U.S. Reps. John Dingell (D-MI), Ed Whitfield (R-KY), and George Miller (D-CA) today introduced legislation to ensure that school children with disabilities will continue to receive the health services they need to stay in school. In its budget for the 2008 fiscal year, the Bush Administration sought to stop reimbursing school districts for an estimated \$3.6 billion in Medicaid spending over the next five years. That spending covers the cost of medical and health-related services that many of the nation's seven million school children with disabilities need in order to attend school. The Protecting Children's Health in Schools Act of 2007 would require the Bush Administration to reimburse school districts for these costs.

The threatened funding serves a variety of purposes, such as providing medical equipment for buses to meet specific children's needs, providing transportation for children from school to their medical appointments, and covering the administrative costs of identifying children who need special medical and learning services.

"Education is the heart of a child's growth and development. For children with special needs, health care is an essential part of their school day," said Kennedy. "With all of the challenges they face, why should they be deprived of the support they need to learn and thrive in school?"

"These kids deserve and need our help; their services should not be cut in order to pay for the tax cuts benefiting the wealthiest among us," said Dingell. "Many schools across this country are trying desperately to help these special needs children and we should be doing the same."

"Children with disabilities should be able to stay in school with other kids," said Miller, the Chairman of the House Education and Labor Committee. "Denying children these services means denying them an opportunity to actively participate in the classroom and learn right alongside their peers. The Bush administration threatened funding for these crucial services last year; it is extremely disappointing to see the administration make the same bad choice this year."

Senator Smith said, "The federal government has been charged with the responsibility under IDEA to ensure that our nation's children who have special needs receive the care and supports necessary to thrive in school. This bill will protect that right by enabling states to appropriately use Medicaid to help pay for these vital services for children."

"Circumstances, such as a disability, should not prevent any child from having the opportunity to attend and succeed in school," said Representative Ed Whitfield. "This vital Medicaid program helps ensure underprivileged children's healthcare needs are met; and allows them to continue with their education."

The Administration's move to stop reimbursing school districts for the Medicaid services follows numerous instances in which it has already arbitrarily denied reimbursement to school for the costs of these services and in which it has failed to give clear guidance to schools about how to apply for the funds.

In addition to ensuring that children with disabilities continue to receive the services they need to stay in school, the bill also improves accountability to ensure that funds are distributed and used properly. For example, the bill calls for the creation of uniform rules for schools to follow when they submit a Medicaid claim, and it establishes guidelines for ensuring that schools are held accountable for filing accurate claims.

Below is a summary of the bill.

"Protecting Children's Health in Schools Act of 2007"

#### Summary

Since 1986 Federal Medicaid policy has explicitly recognized the essential nature of the link between Medicaid and health care for low-income children whose special healthcare needs make management of and access to treatment in school settings an imperative. Recent actions, however, by the Centers for Medicare and Medicaid Services (CMS),

including audits and proposed regulatory cuts in payments to schools for providing healthcare services in the President's FY2008 budget, have created an atmosphere of uncertainty about the continued ability of children with serious and chronic conditions to get the health care they need in mainstream, community settings so that they can go to schools. Longstanding efforts by schools to ensure children are mentally and physically able to learn in the most appropriate setting would be jeopardized. In addition, actions by CMS have also called into question the ability of schools to use Medicaid administrative funds to do outreach in order to enroll Medicaid eligible children.

Rather than discouraging health care in schools, CMS should provide extensive technical assistance to States that seek to optimize children's opportunities to receive needed school-based health care so that they may learn in community educational settings instead of being forced to remain at home, all of which is fully permitted under the current law.

The "Protecting Children's Health in Schools Act of 2007" would set forward clear guidelines in the statute for providing and receiving reimbursement for this care, rather than put schools, families, and their disabled children, and States in a situation where they are uncertain whether or not these medically-necessary services and related administrative and transportation costs will be covered under Medicaid. A description of the provisions of this important legislation follows:

#### Ensuring Reasonable Payment Methodology for Medical and Other Services Provided to Children Through Schools or Other Educational Settings

The Protecting Children's Health in Schools Act of 2007 sets forth requirements for States to receive payment for expenses incurred for medically-necessary items and services, and related administrative expenses, covered under the Medicaid State plan, including reimbursement to the local educational agency in the State or the lead agency in the State with responsibility for administering Part C of IDEA in an educational program or setting on behalf of children enrolled in Medicaid. An "educational program or setting" is defined as any location in which items or services included in an Individualize Education Plan (IEP) or Individual Family Service Plan (IFSP) are delivered, including the home, child care setting, or school of the child, infant, or toddler.

Local education agencies may either bill directly for these legitimate expenses or contract with an outside entity for billing and claims services. For schools that bill directly, the State must follow a methodology approved by the Secretary of Health and Human Services for appropriate expenditures. The legislation outlines basic guidelines for such a methodology:

- For bundled items, services, or administrative expenses, any approved methodology must: ensure expenditures can be tracked, use a sound basis for determining payment rates and methodologies, and match payments with the corresponding expenditures.
- For individual items, services, or administrative expenses any approved methodology must ensure either payment at the prevailing market rate or the State must justify payment not to exceed a higher rate.
- For transportation services, the State must establish a medical need for transportation, and the vehicle must be specially equipped or staffed. Payment may only be made for costs associated with transportation provided to a Medicaid-covered child for receipt of Medicaid-covered services.

Schools that contract for billing and claims services with an outside entity must use a competitive bidding process to select the vendor and pay not more than reasonable rates commensurate with the services performed. Payments for billing and claims services must specify fees as a dollar amount in the contract and may not use contingency fee arrangements.

## Ensuring Access to Care in School Settings for Children Enrolled in Medicaid Managed Care Organizations

The Protecting Children's Health in Schools Act of 2007 seeks to clarify which entity is responsible for coverage of and payment for Medicaid services provided to Medicaid-covered children in educational settings when children are enrolled in Medicaid managed care organizations. The bill requires that State contracts with Medicaid managed care organizations specify the coverage and payment responsibilities of Medicaid managed care organizations for items and services covered under the Medicaid State plan and furnished in or through an educational program or setting. Additionally, such contracts must require that Medicaid managed care organization demonstrates that it has established procedures to ensure coordination between the State, a local educational agency and the lead agency in the State with responsibility for administering Part C of IDEA for services required under the IEP, IFSP, or furnished pursuant to section 504 of the Rehabilitation Act of 1973 and to prevent duplication of services and payments furnished in or through an educational program or setting for individuals enrolled under the contract. The definition of "educational program or setting" is expanded in this context to include a location in which early period screening detection and treatment (EPSDT) items or services are delivered in accordance with the requirements of section 1902(a)(43).

When a Medicaid managed care organization is obligated to pay for items or services furnished in or through an educational program, the Medicaid managed care organization must:

- Contract with the qualified provider (physician, therapist, etc.) furnishing the items or services in or through the educational program;
- Promptly pay such providers at rates at least equal to those in a non-educational program or setting; and
- Treat medical necessity determinations by State licensed providers or providers eligible for Medicaid reimbursement under the Medicaid State plan working in an educational program or setting as final and binding.

Medicaid managed care organizations are also obligated to ensure that its contracted providers refer children for additional non-school-based services covered under the Medicaid State plan when medically necessary. In order to prevent duplicative payments under Medicaid, the legislation prohibits additional payments under fee-for-service Medicaid for items, services, and administrative expenses if such items, services, or expenses are included in the capitated amount or other risk-based rate of payment under a Medicaid managed care contract.

## Ensuring Compliance with Federal and State Requirements

States must have procedures to ensure that all applicable Federal and State requirements are met by providers of services furnished in or through school programs or settings and the educational entities engaged in the provision of administrative services. The bill also requires that State Medicaid agencies demonstrate that such educational entities recover the reasonable costs related to the furnishing of such services or the undertaking of such activities.

## Providing a Uniform Methodology for Educational Program or Setting-Based Claims

Secretaries of HHS and Education, in consultation with State Medicaid directors, State and local educational agencies, and State agencies with responsibility for administering Part C of IDEA, must develop and implement a uniform methodology for claims for Medicaid services provided through a school program or setting within 90 days of enactment.

Such methodology must allow payments for care provided to disabled children so long as the care and activities are

provided consistent with the Medicaid rules outlined in the bill. It also must include a uniform system for submitting claims for administrative costs, based on standards related to time studies and population estimates, with a national standard for determining payment.

#### Assuring Reimbursement for Administrative, Enrollment, and Outreach Activities Conducted by Local Educational Agencies

School settings are a logical and convenient place to identify and enroll children in healthcare coverage under Medicaid or the State Children's Health Insurance Program (SCHIP). Recent actions by the Administration, however, have cast doubts about the ability of States and their educational agencies to continue this practice. This legislation, therefore, ensures this practice can continue without jeopardy and prohibits the Secretary of HHS from denying Federal payments for legitimate Medicaid and SCHIP administrative, enrollment, and outreach activities conducted by local educational agencies.

#### Ensuring Full Payment for Services Furnished in or Through an Educational Program or Setting

In some instances, where schools have incurred expenses for Medicaid services provided to Medicaid eligible children, States have failed to reimburse these entities the full amount expended, instead keeping a portion of the Federal matching funds for other State uses. This legislation would require States to reimburse the educational program the full amount it put forward on behalf of Medicaid.

#### Clarifying and Ensuring Coverage of Medically Necessary Care for Disabled Children under Section 504 of the Rehabilitation Act of 1973

Currently, Medicaid may pay for medically-necessary items and services furnished to Medicaid-eligible children with disabilities who have those needs identified through an IEP or IFSP. The legislation clarifies that Medicaid also may pay for medically-necessary services furnished to Medicaid-eligible disabled children who have been identified by and require services under Section 504 of the Rehabilitation Act of 1973, which guarantees children with disabilities equal access to an education. This ensures access to necessary care and payment for that care, for these vulnerable children. The legislation also clarifies that the Secretary may not deny payment for Medicaid covered early periodic screening detection and treatment and 1902(a)(43) services furnished to Medicaid-eligible children in or through educational settings.

In addition, the Protecting Children's Health in Schools Act of 2007 clarifies that the Secretary may not deny payment for Medicaid-covered services and administrative services furnished in or through educational settings solely because the State utilizes:

- An all-inclusive payment arrangement in making payments for healthcare services; and
- A cost allocation system (for properly attributing costs to applicable programs when funding from more than one source is involved) that meets Federal requirements when paying for the cost of services described in 1902(a)(43) (administrative costs related to screening and treatment) or other administrative services directly related to the administration of the State plan.

These provisions are necessary because up until now States and schools have generally been able to receive payments for such medically necessary services and related administrative costs. Recently, however, the Administration has moved to curtail State coverage and provision of these services in schools and other educational settings. In essence, these provisions maintain and protect current law coverage for children with special needs, for without them this care is in jeopardy.

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Prepared by the Committee on Energy and Commerce

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