MICHIGAN ASSOCIATION OF SCHOOL ADMINISTRATORS
1001 CENTENNIAL WAY, SUITE 300
LANSING, MI 48917-9279
517/327-5910 OFFICE 517/327-0771 FAX

FAX

Fax to number: 202 456 5581

Attention: Andy Rotherham

Date: 2/24/00

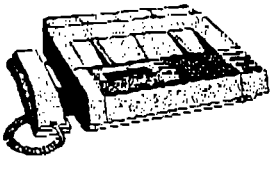
From: Ray Pelman

Number of pages: 5
(Including cover page)

☐ For your information ☐ Per your request

Andy, As per our phone call on Monday attached please find information relative to how Michigan is addressing the HCFA medicaid guidelines issue. I will work w/ Bruce Hunter and try not to add another phone call to your pile – however if you have a question or concern please give me a call

Ray



maisa

Michigan Association of Intermediate School Administrators

1001 Centennial Way,
Suite 300
Lansing, MI 48917-9279
Telephone: 517/327-5910
Fax: 517/327-0772

For Delivery to Your Superintendent

February 23 - MAISA ACTION ALERT

Please contact your federal legislators. Ask them to delay guidelines proposed by the federal Health Care Financing Administration (HCFA) which will seriously reduce Medicaid reimbursement for services provided to school children.

THE ISSUE:

Early this month HCFA issued draft guidelines which will change Medicaid reimbursement for schools. Comments on these guidelines must be received by **March 1, 2000**. Select concerns regarding these guidelines follow:

- The impact of these guidelines would reduce Medicaid reimbursement by approximately 75% in Michigan (i.e. from about $170 million to less than $40 million). These reductions will clearly impact ISD and LEA budgets for regular and special education programs and services.
- Using **guidelines** to achieve these reductions allows HCFA to circumvent longer timelines that would be required if changes were proposed through the normal federal rule-making process.
- The use of guidelines should be used to accomplish primarily administrative changes - not change major policy as is the case with these proposed guidelines.
- These proposed guidelines are lengthy (47 pages) and recommend numerous changes which not only affect policy but likely violate statute (i.e. IDEA).

In summary HCFA has proposed Medicaid reimbursement changes which are extremely complex and lengthy with an unreasonably short response time and which recommend substantial reduction in the funding for the delivery of services to school children.

- The web address for a complete copy of the proposed guidelines is <http://www.hcfa.gov/medicaid/schools/machmpg.htm> Just scroll all the way down the long opening paragraphs, and, after the list of organizations and contacts, you'll see the words "Click Here" in the very last sentence at the bottom of the page. "Click" on it and you'll have the entire DRAFT.

- A listing of select concerns regarding these guidelines will be available on-line through MAISA's website on Thursday, February 24, 2000, at the following address <http://www.melg.org/maisa/medicaid.htm>

ACTION

1. Fax or email your federal legislators **immediately**. Express your concerns regarding the proposed HCFA guidelines. At a minimum express the following concerns:

   - a three-week comment period is unacceptable - **HCFA must employ formal rule-making procedures for substantial policy changes**

   - the proposed cuts are devastating - 75% predicted reduction in claim amount will limit schools' ability to render services to children

   - mere "guidelines" are setting policy and UNDOING existing approved programs in various states

   - the proposed guidelines effectively negate pre-existing Congressional commitments that Medicaid is payor of first resort for all activities relating to IDEA

2. Follow your fax or e-mail with a phone call to your federal legislators. Request their specific support as outlined in your fax or e-mail. Please note and forward their response to MAISA at 517.327.0771 (fax) or <rtelman@admin.melg.org> (e-mail).

3. E-mail the message you sent to your federal legislator to the following individuals:

   - HCFA Administrator Nancy-Ann Min DeParle <ndeparle@hcfa.gov>

   - AASA's Bruce Hunter <bhunter@aasa.org> (It was HCFA's original intent to limit response to these guidelines, which were only published on-line, to five individuals. One of the five individuals is Bruce Hunter of AASA.)

4. Share your concerns and ask for support from your local constituencies (such as your special education PAC). In addition it should be noted a related action alert will be sent on Friday, February 25, 2000, to all Michigan local superintendents who may turn to you for further direction. A copy of this fax follows.

OTHER:

Consonant with these activities MAISA is working with-

1. AASA to identify sponsors of proposed legislation to address these concerns
2. Andy Rothertran, Special Assistant to the President for Education Policy
3. the State of Michigan
4. other related groups both within Michigan and nationally in an attempt to address these HCFA guidelines

As a result of these activities you may be asked to undertake additional initiatives.

Your immediate action as noted above is critically important. There is no substitute for your contacts.

Thank you in advance for your anticipated cooperation.

MICHIGAN ASSOCIATION
OF
SCHOOL ADMINISTRATORS

Office of the Executive Director

1001 Centennial Way, Suite 300
Lansing, Michigan 48917-9279

Telephone 517 327-5910
FAX 517 327-0771

For Delivery to Your Superintendent

February 25 - MASA ACTION ALERT

The federal Health Care Financing Authority (HCFA) has introduced guidelines which will substantially impact Medicaid reimbursement for your intermediate school district. These guidelines are on an extremely fast timeline and as proposed will reduce Medicaid reimbursement in Michigan for the delivery of special education and other services at the ISD by approximately 75% (i.e. over $130 million). These reductions will not only decrease available revenues for the ISD special education programs but likely will decrease reimbursement or increase bill backs to local districts.

Your attention to this matter is very important. Please contact your ISD for further information as to how you can help address this serious and immediate funding concern.

David Rowe

10/21/99 05:30:40 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: Wayne Upshaw/OMB/EOP@EOP, Barry White/OMB/EOP@EOP, Joanne Cianci/OMB/EOP@EOP, Jeffrey A. Farkas/OMB/EOP@EOP

Subject: ED concerns about HR 1180

Attached is a copy of ED's concerns with the Medicaid school-based health services language in the House version of WIIA.

Lillian/Anne: can you send this to HCFA? Thanks.

---------- Forwarded by David Rowe/OMB/EOP on 10/21/99 05:28 PM ----------

"Sheridan, Suzanne" <Suzanne_Sheridan@ed.gov>
10/21/99 05:08:01 PM

Record Type: Record

To: David Rowe/OMB/EOP

cc:

Subject: ED concerns about HR 1180

David -- attached to this should be the list we agreed to produce earlier today on the Department's concerns

Suzanne

(I will not be at work tomorrow -- if you have questions, talk to Carol. JoLeta may also be able to help if you need specific examples.)

<<Concerns about HR 1180.doc>>
Concerns about HR 1180 (as amended) changes to Section 1903(i) and (m) of the Social Security Act

1903(i)(21)(A) -- Approvable methodologies

* The effective date for this section is the date of enactment (Sec. 407(e)(1) of the bill). Although today HCFA made oral representations that

these provisions would not be implemented in a way that required immediate compliance by States that currently have approved State plans that would not meet these new standards, we believe that the language of the bill should make clear to the school and Medicaid communities' that charges that are appropriate under an approved plan will continue to be accepted for a reasonable transition period while States make the necessary adjustments to those plans. This change seems reasonable in light of the communities high sensitivity to the "bundling" issue.

* We remain concerned that this language could impose on school districts standards, particularly as to bundling methodologies, that will be extremely difficult for school districts to meet and that may be more rigorous than those imposed on other service providers who also are providing services in "public agency" environments, e.g., State-run institutions or public hospitals.

Section 1903(i)(21)(B) Transportation

* Subparagraph (21)(B)(iii)(I) provides that payment for transportation services is only available if that transportation is provided on a specially equipped or staffed vehicle. This is understandable, at least, when the transportation is between the child's home or other care site and the child's school. It does not make sense with regard to transportation to and from off-campus Medicaid-covered services -- for example, when the district provides transportation between school and a physical therapy session and the child does not need a specially-equipped or staffed vehicle to get there. We propose removing the words "in such a vehicle" from this provision.

Section 407(b) Services and Managed-Care Contracts

* We remain concerned that the changes in this section will inappropriately shift the costs of Medicaid eligible services that are covered by a managed-care contract onto schools. The language amending 1903(m), by adding a new (xii) should be strengthened by specifying that the coordination required should not only be aimed at preventing duplication of services and payments, but should also be to prevent the shifting of costs of services covered by the contract to State and local educational agencies and school districts, that is consistent with 20 USC 1412(a)(12)(A)(i) [the provision of IDEA that requires that States have interagency agreements that recognize that the financial responsibility of State Medicaid agencies precedes the financial responsibility of State and local educational agencies].

Section 407(d) Developing a Uniform Methodology

* The U.S. Secretary of Education should be specifically mentioned as a party to this consultation process.

Technical ??

* Should section 407(a)(3) (page 134, lines 16-17 of the 10/18 draft) refer to the third sentence 'of paragraph (18)' ?

* If so, a similar fix appears to be needed to section 407(b)(2)(B) (page 136, lines 5-9).

 - Concerns about HR 1180.doc

Message Sent To:

Lillian S. Spuria/OMB/EOP@EOP
Anne E. Tumlinson/OMB/EOP@EOP
Bethany Little/OPD/EOP@EOP
Andy Rotherham/OPD/EOP@EOP
Jeanne Lambrew/OPD/EOP@EOP

- **Language Appears to Allow States to Recover State-Funded Special Education Costs through Medicaid Revenue Billed by Schools (Sec. 407(c))]**

  H.R. 1180 appears to limit a state's retention of Medicaid revenue otherwise due to schools, but at the same time, seems to allow it to recapture state special education funding from this Federal revenue source. It will inappropriately pit schools against their state overseers to vie for funds that should be used to enhance the delivery of services to children. This provision could be catastrophic for school districts providing costly mandated health services to disabled children.

In conclusion, the interplay between health care and school systems is replete with multiple nuances and complexities. We urge the Committee to refrain from using school-based health services as a quick offset fix for disabled adult benefits. At best, this is public policy at its worst.

Sincerely,

Paul G. Vallas
Chief Executive Officer

PGV/amb

Given the above, we have the following comments on H.R. 1180, Section 407:

- **HCFA-Mandated Uniform Methodology May Reduce School-Based Medicaid Services [Sec. 407(d)]**

  The bill gives HCFA 90 days from its enactment to develop and implement a uniform methodology for payment of school-based administrative expenses. Under this design, HCFA would have an unlimited authority to restrict school-based Medicaid services outside of its normal rulemaking process. The full scope of this open-ended provision and the financial negative impact on school districts is entirely unknown. Given the very short time frame allocated for this extremely complex assignment and the historical dearth of meaningful consultation between the agency and school districts, the provision offers school districts little promise for a meaningful and reasonable outcome.

- **New Transportation Reimbursement Requirements Contradict the Spirit and Intent of IDEA [Sec. 407(a)(2)(21)(B)]**

  To receive reimbursement, H.R. 1180 would require that students with disabilities receive transportation that is specially equipped or staffed. The simplicity of this requirement fails to take into account the IDEA mandate that students with disabilities be transported to the maximum extent appropriate with their nondisabled peers. This provision ignores the fact that a disabled child able to ride a bus with nondisabled peers may require transportation to school *solely* because of health service needs, but not require specially equipped or staffed transportation.

- **New Transportation Requirements Would Prorate Transportation Costs to Equal Part of School Day Child is Receiving Health Services [Sec. 407(a)(2)(21)(B)(iii) (II)**

  Even perhaps more inexplicably, H.R. 1180 would for the first time prorate transportation costs in proportion to the time the child receives health services. Thus, as we understand the provision, transportation for a child who receives speech therapy for 30 minutes during a five-hour day would have a cost proration of 1/10. This would be analogous to the passage of a provision for transportation to health care agencies whereby the amount of time a patient sits *waiting* for health services (i.e., not engaged in health services) is deducted from the transportation cost. This is no more absurd than reducing transportation reimbursement for the period of time a child is being educated rather than receiving health services. The cost of the trip is no more or less expensive regardless of whether the child is receiving only health care services, also receiving educational services, or sitting in a health care agency waiting room.

- **The Managed Care Provision Requires Additional Study and Assurances that Schools and Managed Care Agencies Could Share Information in the Normal Course of Business [Sec. 407(b)]**

  The apparent intent of the managed care provisions is to avoid duplication of services or billing. However, language must guard against unintended negative consequences for school-based services and clarify that they are not to be inhibited or restricted, and take into account the complex interaction between required EPSDT services of managed care entities and required IEP services for students with disabilities. Also, clarification is needed to ensure that managed care providers and school districts can share data without violating rules on confidentiality and privacy.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply in the case of any attorney with respect to whom a fee for services is required to be certified for payment from a claimant's past-due benefits pursuant to subsection (a)(4)(A) or (b)(4)(A) of section 206 of the Social Security Act after—

(1) December 31, 1999, or

(2) the last day of the first month beginning after the month in which this Act is enacted.

SEC. 407. PREVENTION OF FRAUD AND ABUSE ASSOCIATED WITH CERTAIN PAYMENTS UNDER THE MEDICAID PROGRAM.

(a) REQUIREMENTS FOR PAYMENTS.—Section 1903(i) of the Social Security Act (42 U.S.C. 1396b(i)) (as amended by section 201(a)(3)(B)) is amended further—

(1) in paragraph (20), by striking the period at the end and inserting "; or"; and

(2) by inserting immediately after paragraph (20) the following:

"(21) with respect to any amount expended for an item or service provided under the plan, or for any administrative expense incurred to carry out the plan, which is provided or incurred by, or on behalf of, a State or local educational agency or school dis-

CONSORTIUM for CITIZENS with DISABILITIES

October 15, 1999

The Honorable J. Dennis Hastert
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Speaker Hastert:

The undersigned member organizations of the Consortium for Citizens with Disabilities Task Forces on Social Security and Employment and Training are pleased to see work incentives legislation on the verge of passage on the House floor.

We appreciate all of the work that you and the Members of the Ways and Means and Commerce Committees have put into resolving numerous issues that have arisen in the legislation. However, as the legislation is addressed by the Rules Committee and prepared for a floor vote, we believe that it is imperative that several issues be resolved. Specifically, we urge you to ensure:

- Inclusion of the Medicaid provisions as marked-up by the Commerce Committee, particularly inclusion of funding for the demonstration and state grant programs as mandatory funding, rather than discretionary funding. The discretionary funding approach for Medicaid programs is unacceptable because it will make the provisions ineffective.

- Inclusion of pay-fors for the entire bill that are acceptable to people with disabilities. Currently, the attorneys' fees provision and the current draft of the Medicaid/education services provisions are unacceptable because they will harm people with disabilities.

All parties to this effort – the President, the House of Representatives, and the Senate – must come together to enact legislation that fulfills the promise of the Work Incentives Improvement Act and does not harm those people with disabilities whom the bill is designed to assist. We can only support a final bill that resolves the above issues.

We pledge to continue to work with you to resolve these important issues so that people with disabilities will have barriers to work removed. We hope to be able to

1730 K Street NW, Suite 1212 • Washington, DC 20006 • ph 202-785-3388 • fax 467-4179 • CCD@[illegible] • www.c-c-d.org

join with you, the Senate, and the President in celebrating enactment of a bill that truly works for people with disabilities.

Sincerely,

Marty Ford
The Arc of the US

Tony Young
UCPA

Paul Seifert
IAPSRS

Co-Chairs, CCD Task Force on Social Security

cc: Chairman David Dreier
Chairman Bill Archer
Chairman Tom Bliley
Ranking Member Joe Moakley
Ranking Member Charles Rangel
Ranking Member John Dingell

On behalf of:

AIDS Action
Alliance for Rehabilitation Counseling (NRCA/ARCA)
American Network of Community Options and Resources
Easter Seals
International Association of Psychosocial Rehabilitation Services
National Association of Developmental Disabilities Councils
National Association of Protection and Advocacy Systems
National Parent Network on Disabilities
NISH
Paralyzed Veterans of America
The Arc of the United States
United Cerebral Palsy Associations

TOTAL P.05

American Association of School Administrators

Leadership for Learning

October 18, 1999

Dear Congressman:

We are extremely concerned that the Rules Committee may—today—act precipitously over a piece of legislation, H.R. 3070 (specifically Section 408), which would have a severe and profoundly negative impact on local school districts serving poor and disabled children.

This bill, scheduled for Rules action today, would, despite its title, limit a school district's recovery of Medicaid-related services, for poor/disabled children, under the assumption that there is widespread "Fraud and Abuse" in this recovery process. We firmly believe this is an erroneous assumption and urge a more comprehensive, open, public discussion before any action is taken on Sec. 408 of H.R. 3070.

We, as the professional association of 14,000 local school superintendents and school executives, were never consulted about this section of H.R. 3070, and we further understand that no group representing local educators had been consulted or asked to participate in any hearing on this matter. In fact, to our knowledge, the bill was not the subject of hearings, but was introduced and immediately marked-up and reported to the full House last week.

We ask that Section 408 be removed and referred back for more thorough consideration, because it would have direct and extremely negative impact on the manner and recovery of costs in a number of areas. Of particular concern is how HMO's, it appears, would be allowed to stop assisting disabled students. Because the Supreme Court has acted in this area, we are keenly aware that new medical costs are already being shifted to schools. Other issues of concern deal with transportation, bundling of claims, and excessive amounts to state-level agencies.

Thank you for your consideration of our views on this highly controversial proposal.

Sincerely,

Bruce Hunter
Director of Public Affairs

1801 North Moore Street ▲ Arlington, Virginia 22209-1813 ▲ 703.528.0700 ▲ Fax 703.841.1543 ▲ http://www.aasa.org

OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503
Education Branch
Education, Income Maintenance, and Labor Division

FAX COVER

DATE: 10/20/99 **TIME:** _____

TO: Aust Rotherham / Bethany Little

FAX NUMBER: 6-5581

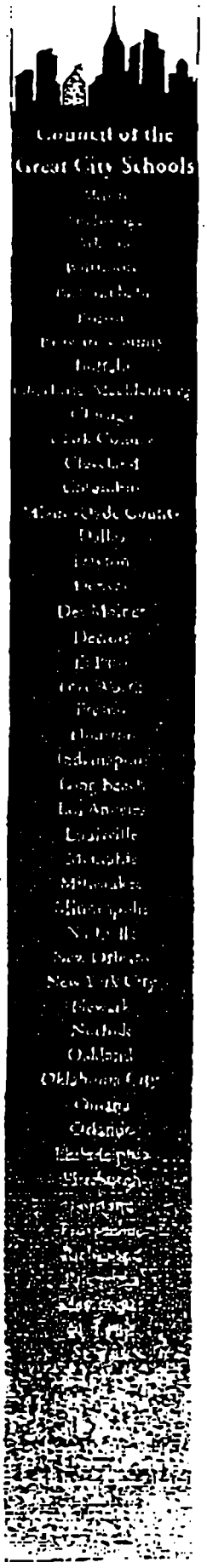
FROM:

___ Wayne Upshaw	___ Lorenzo Rasetti
___ Leslie Mustain	___ Wei-Min Wang
___ Jonathan Travers	___ Kathy Stack
✓ David Rowe	___ Mary Cassell

NUMBER OF PAGES: Cover + 15

Notes: See my email on Medicaid school-based health services.

Education Branch Fax Number: 202/395-4875
Voice Confirmation: 202/395-5880



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http://www.cgcs.org

MEMORANDUM – 10/18/99

TO: Amy Driskowski
House Commerce Committee

FROM: Jeff Simering
Council of the Great City Schools

SUB: School-Based Medicaid Provisions in H.R. 3070 & H.R. 1180 Implications

The Council of the Great City Schools, the coalition of the nation's largest central city school districts, is very concerned with the implications of the school-based Medicaid provisions attached to H.R. 3070. The 58 member school districts of the Council represent approximately 30% of the nation's poor school children and 15% of the nation's disabled school children.

Federal statutes mandate that public school districts provide health-related services to disabled school children in order to ensure their access to an equal educational opportunity. These health services can be quite costly for some severely impaired children and in any event represent a significant financial burden on the primary educational mission of the public school districts.

For the last decade, there has been an express authorization for eligible Medicaid services to disabled children identified under the Individuals with Disabilities Education Act (IDEA). Yet school district participation in the Medicaid program has been very limited until recent years. In effect, school districts have been absorbing Medicaid eligible health services costs within their own strained local school budgets for many years due to the complexities of undertaken this new frontier of health services accounting. The fact that school-based Medicaid claims have increased in recent years reflects significant local efforts to overcome Medicaid access barriers, rather than reflecting any substantial gimmickry or abuse. Even HCFA after consultation over the past several months with State Medicaid directors and education representatives appears to be retrenching from its May 21st letter that absolutely prohibited certain services and methodologies. It has become clear during these consultations, in which the Council has participated, that misunderstanding of school operations by HCFA and vice versa have contributed to the perception of wide spread problems. The Council does not suggest that this relatively new arena of Medicaid participation is problem-free, but we do not believe it to be problem-plagued either.

The school-based provisions attached to H.R. 3070 similarly reflect many of the misunderstandings of the May 21st HCFA letter. HCFA is taking six months of inquiry and consultation before completing their action on just the "bundling" issue. The Council believes that the Commerce Committee should not adopt the school-based provisions of H.R. 3070 without a similar in-depth inquiry, since apparently no hearings on this matter have been held. The discussion on these issues, from our understanding, have been mainly with Senate finance staff and were still in the process of revision based on such input. The Council fears that an attempt to fix

some limited problems could result unintentionally in creating wide spread access problems for schools and school children.

The Council would prefer to work with the Committee to crafted a fully informed measure that addressed both access barriers and problem areas.

A few specific concerns with the provisions may underscore the Council's hesitation on such language:

A HCFA-Mandated Uniform Methodology May Limit Access for Eligible School Children to Medicaid Services

Many of the Council school districts believe that HCFA has been part of the problem, rather than part of the solution to access barriers for school-based Medicaid services. History suggests that a HCFA-developed uniform methodology may be overly restrictive and excessively burdensome. Though consultation with states and local schools is commendable, HCFA just began consultation with school representative last July after a decade of inaction on the IDEA disabled child services provision. There is, therefore, no substantial record to suggest that such consultation will be effective. Finally, the narrow 90 day timeframe for methodology development almost ensures a less than optimal and informed outcome in this complex area. The Council is also concerned that formal notice and comment rulemaking is apparently waived or delay by this provision.

Recommendation: The Council recommends in the alternative crafting a provision that would require HCFA to issue a technical assistance manual and conduct regional technical assistance workshops for states, schools and applicable managed care organizations.

The Managed Care Provision Could Abrogate Managed Care Responsibilities and Shift Further Responsibilities and Costs to School Districts

The managed care provisions of section 408 of H.R. 3070 apparently seek to avoid duplication of services or billings. However, section 408(b) may unintentionally relieve managed care providers of service responsibilities for disabled school children and place the full responsibility for such services on the schools without any assurance of access to Medicaid reimbursements. If duplication is the problem, than the language need be no more complex than requiring State Medicaid agencies to establish procedures to facilitate coordination and prevent duplication.

New Unspecified Procedures, Methods and Standards Established in Section 408 Are Likely to Cause Confusion, Added Burdens, Delays and Potential Access Limitations.

- The requirement for "itemization" in the bundling provision seems inconsistent with the concept of bundling of groups of services and expenses. (Note: Though less than a handful of the Great City Schools use a bundling methodology at present, the prospect of a more efficient methodological option like bundling or capitation, rather than more elaborate encounter billing, is very attractive to school organizations whose primary mission in not health services.

- Schools find little in the health services system to be reasonable, particularly the costs and the low reimbursement rates. Therefore, the interjection of unspecified tests of reasonableness by HCFA is of concern.
- No school officials working in Medicaid services can understand how a proportionate allocation of costs for transportation will work and not be exceptionally administrative burdensome and costly. For example, if a child who would otherwise walk to the neighborhood school is so severely disabled to require enrollment in a specialized school with specialized facilities in another neighborhood or across town within the school district, how would the district determine proportionate impact of the health impairments and the needed services on the costs of transporting this child to this specialized facility. Without the impairment, no costs would be incurred.

<u>The Requirement for Reimbursing Only Transportation on Specially Equipped Vehicles Misunderstands the Nature of Eligible School-based Health Services and is Inconsistent with other Federal Statutory and Civil Rights Law Prohibiting the Segregation of Disabled Children</u>

There is no reason to send many disabled children to receive health services on a specially equipped bus. A child with a speech impairment clearly does not need a bus equipped for physically disabled children. The costs of specially equipped vehicles obviously are more expensive as well. Moreover, federal law prohibits nonessential segregation of disabled children in environments without non-disabled children. This provision is substantially flawed, as was the original May 21st HCFA directive from which the provision has likely been drawn.

<u>While Supporting the Concept of Full Reimbursement to Schools from the State, There May Be a Potential for Gaming the Provision by the States</u>

Under section 408(c) of H.R. 3070 a State may prospective establish a dedicated line item for such expenditures purely to capture the Medicaid reimbursements. This second option should only be available for States which have such a dedicated line item in current law as of the beginning of this federal fiscal year.

In the short period available for review, these are the most immediate areas of concern. (Note that there is no argument regarding contingency and noncompetitive fees for vendors, although this might overreach and inhibit contracts with merely "paper billing" agents as opposed to solely large scale consulting operations.)

The multiple nuances of this complex interaction between health systems and school systems deserved more study and targeted language. The Council hopes that the Committee can hold off taking this action at this late date. A policy of paying for additional services for disabled near-poor adults by limiting access to services for disabled children and schools is questionable at best. The Council is happy to be of whatever assistance is appropriate.

COUNCIL OF THE GREAT CITY SCHOOLS

Fax

Council of the Great City Schools

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Toledo
Tucson
Tulsa

Date: 10/25

To:

Name: Andy Rotherham

Organization: Domestic Policy Advisor

Fax: 456 5581

From:

Name: Jeff Simering

Comments:

Our Alert explaining the HR1180 language and Memo to Commerce staff on earlier HR3070 version

Pages: 6 (including this one)

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October 24, 1999

ALERT *** ALERT *** ALERT
SCHOOL-BASED MEDICAID SERVICES LIMITED BY H.R. 1180

To: Great City Schools Legislative Liaisons
From: Jeff Simering
Re: Calls Opposing H.R. 1180 Limitations on School-based Medicaid Services Needed Prior to Conference Committee on Oct. 25 and 26.

Status: H.R. 1180 and S. 331 provide extended federal health and other benefits to disabled adults who become employed. However, the House bill (H.R. 1180) pays for these new benefits to disabled adults by restricting payments for school-based Medicaid services and with a number of other revenue offsets. It is ironic that additional benefits for disabled working adults (generally a good policy) are financed in part with cuts to school-based Medicaid services ($70 million over five years).

These school-based Medicaid offsets popped up last week in a similar Ways and Means Committee bill and were attached to H.R. 1180, which passed the House by a 400-vote margin. Despite Council efforts, this 11th hour maneuver ensured that virtually no member of Congress focused on the fact that services for disabled school children were being cut to pay for services for disabled adults.

The restrictive language in H.R. 1180 for school-based Medicaid services is so broad and ambiguous that many, if not most of currently reimbursed health-related services for IDEA children may be at risk of elimination. There are some legitimate arguments that transportation billing of Medicaid may be overused in some places, and that consultant fees of over 20% of billings may be a bit excessive. However, the seven pages of Medicaid limitation language of the bill represent significant overkill:

- Places new restrictions on the practice of billing for "bundled" services in schools (but not in any other health subsystem like early intervention, residential services, etc.) requiring actuarial basis and reconciliation, or other comparative basis;
- Places new restrictions on transportation services including to: those under age 21, IEP notations of medical need for transportation, using specially equipped or staffed vehicles, cost allocation attributable to medical need for transportation and allocated by the proportion of costs equal to the portion of the school day spent in activities related to Medicaid covered services;
- Places requirements for competitive bidding of contracts in connection with collection and submission of Medicaid claims, and prohibits contingent fee contracts;
- Requires coordination of services to prevent duplicative billing by managed care providers and schools, and prohibits payments to schools if managed care

providers are receiving capitated or similar payments for such services in their contract with the State;

- Requires states to pass-thru Medicaid reimbursements based on the percentage paid by the state or local education agency;
- Mandates that HCFA establish a uniform methodology for school-based Medicaid services within 90 days

Problem Areas:

1. Limitations on bundling (though use by only a handful of Great City Schools) preclude a cost-effective method for non-Medicaid participating school districts to begin participation in the Medicaid. These limits are applied to school-based bundling but to no other bundling of services.
2. IDEA requires transportation in the least restrictive environment for disabled school children through age 21 not under age 21. It does not require special buses or special staffing, as does H.R. 1180, but does require a transportation need related to the disability. No one knows how to allocate costs between what are a health-related service and what is not, particularly for severe and multiple disabilities.
3. If a child is covered under a managed care provider contract, the H.R. 1180 language may preclude school-based services reimbursements from the State, and require in the alternative a separate agreement with the managed care provider (a nightmare waiting to happen!)
4. The SEA may claim that its State categorical special education funds allow for paying health-related costs, therefore the State may claim the entire Medicaid reimbursement.
5. HCFA has never been school-friendly. Its May 21st letter on school-based services was not only restrictive but misunderstood IDEA and school-based health services. Any uniform methodology mandated by HCFA even with consultation with SEAs and LEAs will likely be extremely restrictive. Developing this uniform methodology within 90 days will likely produce multiple errors and further limit our school-based service reimbursements.

Action: School districts should contact their delegations immediately and point out that: 1) schools were promised greater access to Medicaid school-based services in agreeing to support the IDEA amendments of 1997, 2) these H.R. 1180 provisions renege on that assurance, and 3) the school-based language should be dropped from the House version of the bill in Conference Committee. Suggest that Congress find $70 million worth of revenue offsets over five years elsewhere – but certainly not by limiting services for disabled school children in their schools. If claims of fraud, waste and abuse are made, suggest that no House hearings were held and that the Committee of jurisdiction should address these limited problems in a measured fashion, not in this overkill manner at the 11th hour as Congress is set to adjourn.

Please Call Your Senate and House Delegation Immediately at 202-224-3121

(Stay tuned later in the week as the possible cuts in the Federal Education Budget may need your intervention as well)

Council of the Great City Schools
1301 Pennsylvania Avenue, N.W. ◆ Suite 702 ◆ Washington, D.C. ◆ 20004
(202) 393-2427 ◆ (202) 393-2400 (fax)
http://www.cgcs.org

MEMORANDUM -- 10/18/99

TO: _____
House Commerce Committee

FROM: Jeff Simering
Council of the Great City Schools

SUB: School-Based Medicaid Provisions in H.R. 3070 & H.R. 1180 Implications

The Council of the Great City Schools, the coalition of the nation's largest central city school districts, is very concerned with the implications of the school-based Medicaid provisions attached to H.R. 3070. The 58 member school districts of the Council represent approximately 30% of the nation's poor school children and 13% of the nation's disabled school children.

Federal statutes mandate that public school districts provide health-related services to disabled school children in order to ensure their access to an equal educational opportunity. These health services can be quite costly for some severely impaired children and in any event represent a significant financial burden on the primary educational mission of the public school districts.

For the last decade, there has been an express authorization for eligible Medicaid services to disabled children identified under the Individuals with Disabilities Education Act (IDEA). Yet school district participation in the Medicaid program has been very limited until recent years. In effect, school districts have been absorbing Medicaid eligible health services costs within their own strained local school budgets for many years due to the complexities of undertaken this new frontier of health services accounting. The fact that school-based Medicaid claims have increased in recent years reflects significant local efforts to overcome Medicaid access barriers, rather than reflecting any substantial gimmickry or abuse. Even HCFA after consultation over the past several months with State Medicaid directors and education representatives appears to be retrenching from its May 21st letter that absolutely prohibited certain services and methodologies. It has become clear during these consultations, in which the Council has participated, that misunderstanding of school operations by HCFA and vice versa have contributed to the perception of wide spread problems. The Council does not suggest that this relatively new arena of Medicaid participation is problem-free, but we do not believe it to be problem-plagued either.

The school-based provisions attached to H.R. 3070 similarly reflect many of the misunderstandings of the May 21st HCFA letter. HCFA is taking six months of inquiry and consultation before completing their action on just the "bundling" issue. The Council believes that the Commerce Committee should not adopt the school-based provisions of H.R. 3070 without a similar in-depth inquiry, since apparently no hearings on this matter have been held. The discussion on these issues, from our understanding, have been mainly with Senate finance staff and were still in the process of revision based on such input. The Council fears that an attempt to fix

- Schools find little in the health services system to be reasonable, particularly the costs and the low reimbursement rates. Therefore, the interjection of unspecified tests of reasonableness by HCFA is of concern.
- No school officials working in Medicaid services can understand how a proportionate allocation of costs for transportation will work and not be exceptionally administrative burdensome and costly. For example, if a child who would otherwise walk to the neighborhood school is so severely disabled to require enrollment in a specialized school with specialized facilities in another neighborhood or across town within the school district, how would the district determine proportionate impact of the health impairments and the needed services on the costs of transporting this child to this specialized facility. Without the impairment, no costs would be incurred.

The Requirement for Reimbursing Only Transportation on Specially Equipped Vehicles Misunderstands the Nature of Eligible School-based Health Services and is Inconsistent with other Federal Statutory and Civil Rights Law Prohibiting the Segregation of Disabled Children

There is no reason to send many disabled children to receive health services on a specially equipped bus. A child with a speech impairment clearly does not need a bus equipped for physically disabled children. The costs of specially equipped vehicles obviously are more expensive as well. Moreover, federal law prohibits nonessential segregation of disabled children in environments without non-disabled children. This provision is substantially flawed, as was the original May 21st HCFA directive from which the provision has likely been drawn.

While Supporting the Concept of Full Reimbursement to Schools from the State, There May Be a Potential for Gaming the Provision by the States

Under section 408(c) of H.R. 3070 a State may prospective establish a dedicated line item for such expenditures purely to capture the Medicaid reimbursements. This second option should only be available for States which have such a dedicated line item in current law as of the beginning of this federal fiscal year.

In the short period available for review, these are the most immediate areas of concern. (Note that there is no argument regarding contingency and noncompetitive fees for vendors, although this might overreach and inhibit contracts with merely "paper billing" agents as opposed to solely large scale consulting operations.)

The multiple nuances of this complex interaction between health systems and school systems deserved more study and targeted language. The Council hopes that the Committee can hold off taking this action at this late date. A policy of paying for additional services for disabled near-poor adults by limiting access to services for disabled children and schools is questionable at best. The Council is happy to be of whatever assistance is appropriate.

some limited problems could result unintentionally in creating wide spread access problems for schools and school children.

The Council would prefer to work with the Committee to crafted a fully informed measure that addressed both access barriers and problem areas.

A few specific concerns with the provisions may underscore the Council's hesitation on such language:

A HCFA-Mandated Uniform Methodology May Limit Access for Eligible School Children to Medicaid Services

Many of the Council school districts believe that HCFA has been part of the problem, rather than part of the solution to access barriers for school-based Medicaid services. History suggests that a HCFA-developed uniform methodology may be overly restrictive and excessively burdensome. Though consultation with states and local schools is commendable, HCFA just began consultation with school representative last July after a decade of inaction on the IDEA disabled child services provision. There is, therefore, no substantial record to suggest that such consultation will be effective. Finally, the narrow 90 day timeframe for methodology development almost ensures a less than optimal and informed outcome in this complex area. The Council is also concerned that formal notice and comment rulemaking is apparently waived or delay by this provision.

Recommendation: The Council recommends in the alternative crafting a provision that would require HCFA to issue a technical assistance manual and conduct regional technical assistance workshops for states, schools and applicable managed care organizations.

The Managed Care Provision Could Abrogate Managed Care Responsibilities and Shift Further Responsibilities and Costs to School Districts

The managed care provisions of section 408 of H.R. 3070 apparently seek to avoid duplication of services or billings. However, section 408(b) may unintentionally relieve managed care providers of service responsibilities for disabled school children and place the full responsibility for such services on the schools without any assurance of access to Medicaid reimbursements. If duplication is the problem, than the language need be no more complex than requiring State Medicaid agencies to establish procedures to facilitate coordination and prevent duplication.

New Unspecified Procedures, Methods and Standards Established in Section 408 Are Likely to Cause Confusion, Added Burdens, Delays and Potential Access Limitations.

- The requirement for "itemization" in the bundling provision seems inconsistent with the concept of bundling of groups of services and expenses. (Note: Though less than a handful of the Great City Schools use a bundling methodology at present, the prospect of a more efficient methodological option like bundling or capitation, rather than more elaborate encounter billing, is very attractive to school organizations whose primary mission in not health services.

March 20, 2000

The Honorable William J. Clinton
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear President Clinton:

The undersigned organizations, representing parents, educators, school administrators, school health professionals, school board members, and other education advocates wish to express our strong dissatisfaction with the recently released *Medicaid School-Based Administrative Claiming Guide*. Providing health services in the school setting is the easiest and most effective way to reach the majority of our nation's children. Unfortunately, the practice of serving children through schools is fundamentally challenged by HCFA's draft guidance.

Medicaid reimbursement is currently available for a wide range of administrative health service costs and screenings. The practice of screening students in schools provides us with the greatest chance of identifying those in need of special health services. Medicaid reimbursements also help to pay for the expensive health care costs sometimes associated with educating students with disabilities. The recent *Cedar Rapids* decision requires that school districts provide health care services to disabled students to facilitate their participation in the classroom setting. If the HCFA guidelines are accepted, and Medicaid administrative reimbursement for school-based health services is significantly reduced, a large financial burden would be placed on local school districts. Without help from Medicaid, districts will be forced to either raid the budgets of other critical education programs or cut services.

The Health Care Financing Administration's *Claiming Guide* is misguided in two critical areas. First, the guide fails to ensure that schools will continue to be reimbursed for services covered by Medicaid. Your work on the CHIP program clearly illustrates your desire to deliver health care services to as many children as possible. The HCFA guidelines, as currently drafted, are a step in the opposite direction. Second, the *Claiming Guide* offers a list of what schools should NOT do rather than providing a comprehensive guide to making claims through Medicaid. Any attempts at Medicaid reform must take a positive approach that make it easier for school districts to participate and easier for students to receive necessary services. It is also important that HCFA incorporate the education community in future discussions of new guidelines so we can ensure that the guidance accurately reflects the needs of schools.

The *Claiming Guide* is evidently a reaction to a report by the General Accounting Office. The GAO reported to the Senate Finance Committee that the number of school reimbursement claims is up dramatically, and HCFA subsequently began looking into

reasons for the increase. The true reason for the rapid increase in claims is quite simple: the number of school districts participating in the program has shot up over the last few years as more and more schools became aware of the program. We went from a handful of districts applying for reimbursement a few years ago to over 10,000 districts applying today. The rise in costs is a reflection of the increase in Medicaid claims; it should not be questioned, it should be applauded.

GAO is also about to report some cases where school districts have pushed the limits of Medicaid reimbursement for administering the services. If they look GAO will also find that some states are taking an inordinate percentage of funds generated by school-based services off the top as a sort of tribute for passing through the Medicaid system. In New Jersey, for example, the governor takes a large percentage of Medicaid reimbursement funds and uses it for expenses unrelated to child health care or education. Our organizations in no way support any bad accounting practices or governors seizing funds meant for children's services. Clearly that practice must be stopped, but at the same time, we must not cut off school-based health services in the process.

A successful Medicaid guide ought to make it as easy as possible for legitimate Medicaid claims to be efficiently processed and reimbursed. We hope that you will encourage HCFA to rethink their approach and issue a new, more positive set of guidance.

Sincerely,

American Association of School Administrators
American Counseling Association
American Federation of Teachers
Association of Educational Service Agencies
Council for Exceptional Children
Council of the Great City Schools
National Association of School Psychologists
National Association of Secondary School Principals
National Association of Social Workers
National Education Association
National Parent Teacher Association
National Rural Education Association
National School Board Association
New York State Education Department
School Social Work Association of America

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DALE E. KILDEE
9TH DISTRICT, MICHIGAN

Congress of the United States
House of Representatives
Washington, DC 20515

COMMITTEES:
EDUCATION AND THE WORKFORCE
EARLY CHILDHOOD, YOUTH & FAMILIES
EMPLOYER-EMPLOYEE RELATIONS
RESOURCES
FORESTS AND FOREST HEALTH
NATIONAL PARKS & PUBLIC LANDS
CO-CHAIR:
CONGRESSIONAL AUTOMOTIVE CAUCUS
CONGRESSIONAL NATIVE AMERICAN CAUCUS

FAX SHEET

CONGRESSMAN DALE E. KILDEE
2187 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
(202) 225-3611 Phone
(202) 225-6393 Fax

Date: 11-2-99

To: Andy Rotherham

From:

___ DEK	___ Christopher Mansour
✓ Callie Coffman	___ Michael Gorges
___ Emily Hulburt	___ Jennifer Maranzano
___ Greta Moore	___ Kim Teehee
___ James Ananich	___ Other _____

Number of Pages, Including This Page 3

COMMITTEE ON EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES

2181 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6100

MAJORITY – (202) 225-4527
(TTY)—(202) 226-3372
MINORITY (202) 225-3725
(TTY)—(202) 226-3116

October 26, 1999

The Honorable Tom Bliley
Chairman
Committee on Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable John D. Dingell
Ranking Member
Committee on Commerce
2322 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Bill Archer
Chairman
Committee on Ways and Means
1102 Longworth House Office Building
Washington, D.C. 20515

The Honorable Charles Rangel
Ranking Member
Committee on Ways and Means
2354 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Trent Lott
Majority Leader
S230 Capitol
Washington, D.C. 20510

The Honorable Daniel Patrick Moynihan
Ranking Member
Committee on Finance
464 Russell Senate Office Building
Washington, D.C. 20510

The Honorable William Roth
Chairman
Committee on Finance
219 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Members:

We are writing to express our concern about section 407 of H.R. 1180, as passed by the House on October 19, 1999. While we support the underlying bill, this provision could seriously curtail, if not terminate, the ability of schools to receive reimbursement for school-based health services provided under the Individuals with Disabilities Education Act (IDEA).

During the last reauthorization of IDEA in 1997, Congress reaffirmed the ability of schools to seek reimbursement for Medicaid eligible services when these services are required for a child with a disability to receive a free, appropriate public education. With

competing pressures at the local level, Medicaid reimbursement is often a critical financial component of a school district's efforts to provide an equal educational opportunity to its disabled children.

We are concerned that this section, added to H.R. 1180 after Committee markup and prior to floor consideration, could seriously undermine the ability of school districts to recoup legitimate costs associated with the provision of school-based health services. Presently, States "bundle" (group together individual costs for multiple services) their reimbursable school-based services costs in order to make recouping costs manageable. Section 407 of the bill would hamper the ability of States to continue this practice by requiring the itemization of individuals services and other procedures.

States also bill Medicaid for costs associated with transporting a disabled child to and from school, when such transportation is necessary due the child's disability. Section 407 would only permit this reimbursement for children who ride segregated, specially equipped buses, or buses with special staffing. This requirement is inconsistent with Federal civil rights law, including IDEA's focus on encouraging mainstream placements, including allowing disabled children who are able to ride the same school bus as nondisabled children. Section 407 would also require that reimbursements for transportation costs be determined by a new proportionate allocation procedure that will be extremely difficult, if not impossible, for school districts to calculate.

Lastly, section 407 could eliminate payments to schools for school-based health services if a child is covered under a Medicaid managed care provider. This provision ignores the assurance of IDEA designed to improve access to reimbursement of Medicaid eligible services.

We would request that you reconsider using these provisions as offsets for H.R. 1180 and would be pleased to further discuss this issue with you. While the provisions of section 407 raise legitimate questions, we would be concerned if there was a rush to include this language in H.R. 1180 mostly as a means to offset other costs in the bill. Thank you for your attention to this matter.

Sincerely,

William L. Clay
Ranking Member
Committee on Education
and the Workforce

Dale E. Kildee
Ranking Member
Subcommittee on Early Childhood
Youth and Families

Attention:	**Andy Rotherham**	Date:	11/2/99
Company:	White House	Number of Pages:	3
Fax Number:	202-456-5581		
Voice Number:	202-456-5372		

From:	**Larry Snowhite**
Company:	McA Enterprises, Inc.
Fax Number:	202-862-9814
Voice Number:	202-862-8515

Subject: HR 1180

Comments:

Andy, attached is a Dear Colleague and draft letter to Speaker Hastert being circulated by Rep. Bentsen ---

Larry

November 1, 1999

Protect School-Based Health Care Services for Low-Income Children

Dear Colleague:

I am writing to ask you to cosign the proposed letter on the reverse side of this Dear Colleague to Speaker Dennis Hastert regarding school-based health care services for low-income children. Several weeks ago, the House of Representatives passed legislation, H.R. 1180, the Work Incentives Improvement Act. However, I am concerned that the offsets included in this bill would adversely impact the school-based health services provided to Medicaid-eligible children.

According to recent Census Bureau data, there are **4.4 million** children eligible for, but not enrolled in, Medicaid. Public schools are on the frontline of providing services to children and have prevent their ability to help identify these Medicaid-eligible children. I believe we must act to eliminate language included in H.R. 1180 (Section 407) of this bill because it would devastate these school-based programs.

Under current law, Medicaid is authorized to reimburse schools for such services as conducting outreach to identify and refer to establish Medicaid eligibility; assisting applicants with Medicaid enrollment; and providing preventive, physical and rehabilitative services to these low-income children. The State of Texas and 35 other states have worked with their respective Medicaid agencies and the Health Care Financing Administration (HCFA) to implement these programs.

Section 407 of this bill would impose new restrictions on the Medicaid Administrative Claiming (MAC) program by requiring HCFA to issue new regulations related to it. These regulations would be effective in 90 days and impose significant burdens on school-based health programs by limiting contingency fees, terminating Medicaid's reimbursements for special education transportation services, and impose onerous requirements that would make it more difficult for schools to provide school-based medical services for those children who are managed care enrollees. I am concerned that the impact of this "one-size-fits-all" regulation would be to eliminate current school-district-based programs without Congressional review of this matter.

I urge you to join me in sending this letter to Speaker Hastert to eliminate these offset provisions. If you have any questions about this, please do not hesitate to contact me or Bradley Edgell at 5-7508.

Sincerely,

Kenneth E. Bentsen, Jr

November 3, 1999

The Honorable Dennis Hastert
Speaker
U.S. House of Representatives
H-232 The Capitol
Washington, D.C. 20515

Dear Speaker Hastert,

We are writing to urge you to eliminate the school-based health provisions included in H.R. 1180, the Work Incentives Improvement Act. We are concerned that these offset provisions would reduce the number of low-income children who receive health services in public schools.

According to the Census Bureau, there are 4.4 million children eligible for, but not enrolled in, Medicaid. Public schools are on the frontline of providing services to these children and have proven their ability to help identify these Medicaid-eligible children. We believe we must act to eliminate language in H.R. 1180 (Section 407) because it would devastate these school-based programs.

Under current law, Medicaid is authorized to reimburse schools for such services as conducting outreach to establish Medicaid eligibility; assisting applicants with the application process, and providing preventive, physical and rehabilitative services to these low-income children. There are currently 36 states which operate school-based health programs which would be impacted by these offset provisions.

Section 407 of H.R. 1180 would impose new restrictions on these programs by requiring the Health Care Financing Administration (HCFA) to issue new regulations related to this program. These regulations would be effective in 90 days and impose significant new burdens on school-based system by limiting contingency fees, terminating Medicaid's reimbursements for special education transportation services, and imposing onerous requirements that would make it for schools to provide school-based medical services for those children who are managed care enrollees. In the middle of a school-year, 90 days is simply not enough time for schools to make adjustments in their budgets and would decrease the number of participating schools. We are concerned that this "one-size-fits-all" regulation would not provide sufficient flexibility to allow states to maintain the innovative programs which they have designed to reach these children.

Thank you for your consideration of our views and we look forward to working with you to eliminate these provisions.

Sincerely,

Attention:	**Andy Rotherham**	Date:	11/2/99
Company:	White House	Number of Pages:	7
Fax Number:	202-456-5581		
Voice Number:	202-456-5372		

From:	**Larry Snowhite**
Company:	McA Enterprises, Inc.
Fax Number:	202-862-9814
Voice Number:	202-862-8515

Subject: School-based Medicaid/HR 1180

Comments:

Andy, here are (1) the CSBA letter to the CA delegation, (2) their Fact Sheet on CA impacts, (3) the Young letter, and (4) the Goodling/McKeon/Castle letter to conferees.

Maryln McAdam
Larry Snowhite

California School Boards Association

November 1, 1999

The Honorable Buck McKeon
United States House of Representatives
2242 RHOB
Washington, D.C. 20515

CSBA

Dear Representative McKeon:

The California School Boards Association (CSBA), which represents the state's more than one thousand school districts, is writing to inform you of our strong opposition to provisions of H.R. 1180 that will significantly reduce Medicaid benefits for low-income children with disabilities.

H.R. 1180, the "Ticket To Work and Work Incentive Improvement Act of 1999" is designed to provide additional Medicaid benefits for low-income adults with disabilities seeking employment. While the intent of the bill is laudable, Section 407 — a provision added at the last minute to offset some of the bill's costs — would seriously curtail, if not eliminate, the ability of schools in California to receive reimbursement for school-based health services for low-income children with disabilities under the Medicaid program.

Specifically, section 407 would invalidate virtually all existing Medicaid claims processing contracts, replace the flexible billing program with a one-size-fits-all model, terminate the billing to Medicaid of special education transportation services, and impose requirements making it impossible for schools to provide school-based medical services for children who are managed care enrollees. This is entirely unacceptable. Payment for these needed disability services for adults should not come at the expense of disabled children by restricting access to cost effective school-based services.

Moreover, the Individuals with Disabilities Education Act (IDEA) mandates that public school districts provide health-related services to children with disabilities in order to ensure their access to equal educational opportunities. These health services can be quite costly and Congress has provided for partial reimbursement through Medicaid. Schools are critical links in identifying and enrolling Medicaid-eligible children in state administered health insurance programs, like Medi-Cal. It simply makes no sense to limit or eliminate the role of schools in providing Medicaid reimbursable health services for their eligible children. The result will be fewer service options for children and the diversion of millions of dollars of education funds to provide medical services.

H.R. 1180 has been referred to conference. Please contact the conferees on the attached list to urge them to reject Section 407 of the House bill.

Also attached is a fact sheet that describes the impact that Section 407 would have on California school districts and on low-income disabled children within the state. For additional information please contact Kevin Gordon, Assistant Executive Director, or Abe Hajela, Senior Legislative Advocate, in the Governmental Relations office at (800) 266-3382.

Sincerely,

Davis W. Campbell
Executive Director

FACT SHEET

SCHOOL-BASED HEALTH CARE SERVICES FOR POOR AND DISABLED CHILDREN IMPACT OF H.R. 1180 ON CALIFORNIA SCHOOLS

- Section 407 of H.R. 1180, the "Ticket to Work and Work Incentives Improvement Act of 1999," contains a last-minute provision that would significantly limit school-based health services for poor and disabled children under the Medicaid and Medi-Cal programs. It was attached as an offset without any hearings.
- Federal law mandates that public school districts provide health-related services to children with disabilities in order to ensure their access to equal educational opportunities. These health services can be quite costly. The Individuals With Disabilities Education Act (IDEA) promised improved access to school-based participation in the Medicaid/Medi-Cal program from low-income students with disabilities. H.R. 1180 would restrict such school-based Medicaid services.
- H.R. 1180 is headed in the exact opposite of federal policy. Congress requires that states perform outreach to identify and refer children who are Medicaid eligible for appropriate services and provides federal matching payments for outreach services as part of the state's Medicaid program.
- Schools are critical links in efforts to identify and enroll children in State administered health insurance programs, like Medi-Cal. School districts in California and in 34 other states participate in the Medicaid program as part of the school-based health initiative, providing covered medical services such as physical, occupational, and speech therapy, as well as diagnostic, preventive, and rehabilitative services, through school personnel and qualified contractors. Schools also provide an administrative outreach program to establish Medicaid eligibility, assist applicants in completing Medicaid forms, and arrange appointments for medical and screening services. H.R. 1180 would significantly limit the ability of schools to provide these services and cause massive disruptions in school finances by:
  - Increasing cost to districts;
  - Increasing the regulatory burden and imposing one-size-fits-all federal rules;
  - Invalidating existing contracts; and
  - Disrupting on-going administration and claim processing.
- In California, services to 2.77 million Medicaid-eligible children, including 1.7 million children who have not been identified, could be affected if the provisions of H.R. 1180 were enacted.
- H.R. 1180 if enacted could cost school districts at least $5 million in the first year alone because of radical and inflexible changes in the way districts provide for training, claims processing, and billing programs. These changes would be effective upon enactment, with additional rules to be written
- While the over-all goals of H.R. 1180 are worthwhile, the last-minute attempt to pay for needed disability services for adults should not be done at the expense of needy children and their access to mandated and essential school-based health care services. As passed by the House, the bill pits the needs of disabled adults against services for disabled students. This is a totally unacceptable situation. The Medicaid offset provision in Section 407 of H.R. 1180 must be eliminated.

C.W. BILL YOUNG
10th District, Florida

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CHAIRMAN
COMMITTEE ON
APPROPRIATIONS

Congress of the United States

House of Representatives

Washington, DC 20515–0910

October 26, 1999

The Honorable William F. Goodling
Chairman
Committee on Education and the Workforce
2181 Rayburn House Office Building
Washington, D.C. 20515-6100

Dear Mr. Chairman:

This is to share with you the concerns conveyed to me by the Pinellas County School Board regarding Section 407 of H.R. 1180, as approved by the House on October 19th.

While the Board strongly supports the goals of H.R. 1180, they have serious concerns about the changes proposed by Section 407 to offset the costs of this legislation. Florida's schools have worked successfully with the State Medicaid agency and the Health Care Financing Administration to implement an effective program to deliver services to Medicaid eligible students. Section 407 will adversely impact Florida's ability to provide these services.

Specifically, the Board has raised concerns that this section will invalidate existing claims processing contracts, replace the flexible billing program with a one-size-fits all model, terminate the billing to Medicaid of special education transportation services, and impose requirements making it impossible for schools to provide school-based medical services for children who are managed care enrollees.

As you go to conference with the Senate on this legislation, it is my hope that you will address these concerns in any final legislation that comes back to the House. Thank you for your assistance in this regard. With best wishes and personal regards, I am

Very truly yours,

C. W. Bill Young
Member of Congress

CWY:gml

October 27, 1999

The Honorable Bill Archer
Chairman
Committee on Ways and Means
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Archer:

We are writing to express our concern about section 407 of H.R. 1180, as passed by the House on October 19, 1999.

H.R. 1180 makes much needed improvements to the vocational rehabilitation (VR) system to allow participants to choose their VR service providers, which we support. Additionally, we support section 409 of the bill, which changes the index for determining the lender yield on student loans. Although this provision is unrelated to H.R. 1180, we were happy to support its inclusion on the House floor and the use of the savings created by changing the student loan index to offset the costs associated with the changes included in H.R. 1180 that greatly benefit persons with disabilities.

However, we do have concerns with the inclusion of section 407 in the bill. Section 407 could result in seriously curtailing, if not the termination of, the ability of schools to receive reimbursement for services necessary for students with disabilities to receive a free, appropriate public education under the Individuals with Disabilities Education Act (IDEA). During the last reauthorization of IDEA in 1997, Congress reaffirmed the ability of schools to seek reimbursement for Medicaid eligible services when these services are required for a child with a disability to receive a free, appropriate public education. With competing pressures at the local level, Medicaid reimbursement is often a critical financial component of a school district's efforts to provide a free, appropriate public education to students with disabilities.

We are concerned that this section, added to H.R. 1180 after Committee markup and prior to Floor consideration, could seriously undermine the ability of school districts to recoup legitimate costs associated with providing an appropriate education. Presently, States "bundle" (group together individual costs for multiple services) their reimbursable services costs in order to make recouping costs manageable. Section 407 of the bill Rep.

would hamper the ability of States to continue this practice by requiring the itemization of individual services and other procedures.

States also bill Medicaid for costs associated with transporting a disabled child to and from school when such transportation is necessary due to the child's disability. Section 407 would only permit this reimbursement for children who ride segregated, specially equipped buses, or buses with special staffing. This requirement could be inconsistent with IDEA's focus on the least restrictive environment, including possibly preventing a disabled child from riding the same school bus as nondisabled children. Section 407 would also require that reimbursements for transportation costs be determined by a new proportionate allocation procedure that will be extremely difficult, if not impossible, for school districts to calculate.

Lastly, section 407 could eliminate reimbursements for the costs of services if a child is covered under a Medicaid managed care provider. This provision ignores the language added to IDEA in 1997 that strengthens the coordination between public educational and non-educational agencies to ensure the provision of a free, appropriate public education and the ability of schools to access reimbursement for Medicaid eligible services.

While we support the inclusion of the changes to the index for determining the lender yield on student loans and the use of those savings in this bill, we would request that you reconsider using the Medicaid reimbursement provisions in section 407 as offsets in H.R. 1180. The provisions of section 407 address legitimate concerns, but we have difficulty with rushing to include this language in H.R. 1180 mostly as a means to offset other costs in the bill without thoughtful consideration of the impact of the provision. Should you have any questions regarding this correspondence, please have your office contact Krisann Pearce, of the Committee staff, at 5-6558. Thank you for your attention to this matter.

Sincerely,

WILLIAM F. GOODLING
Chairman
Committee on Education and
the Workforce

MICHAEL N. CASTLE
Chairman
Subcommittee on Early Childhood,
Youth and Families

HOWARD P. "BUCK" McKEON
Chairman
Subcommittee Postsecondary Education,
Training and Life-Long Learning

cc: The Honorable Tom Bliley
The Honorable John Dingell
The Honorable Charles Rangel
The Honorable Michael Bilirakis
The Honorable Sherrod Brown
The Honorable E. Clay Shaw
The Honorable Robert Matsui
Senator Trent Lott
Senator William Roth
Senator Daniel Patrick Moynihan

OMB Disability and Health Estimates
H.R. 1180: Ticket to Work and Work Incentives Improvement Act
House Passed Bill
(In millions; revenues/savings(-); costs (+))

Proposal	Fiscal Year 2000	2001	2002	2003	2004	Total 2000-2004
Direct Spending						
TITLE I: Ticket to Work and Self-Sufficiency & Related Provisions						
Ticket to Work						
-- Medicare	0	0	0	0	0	0
-- DI	0	0	0	-2	-3	-5
-- SSI	0	0	-5	-5	-5	-15
Bar on Work CDRs for Certain DI Beneficiaries with Earnings						
-- DI	0	0	0	5	15	20
Expedited Reinstatement of DI Benefits Within 60 Months of Termination						
-- Medicaid	0	-1	-2	-2	-3	-9
-- DI	-1	-3	-6	-8	-10	-28
-- SSI	0	-1	-2	-2	-3	-8
Subtotal Title II	***-1***	***-5***	***-15***	***-14***	***-9***	***-45***
TITLE II: Expanded Availability of Health Services						
Medicaid						
-- Medicaid State Options	0	2	4	5	7	18
-- Infrastructure Grants	1	5	11	16	21	54
-- Disability Definition Demonstration	1	5	11	17	22	56
Subtotal, Medicaid	2	12	26	38	50	128
Medicare						
-- Medicare	0	10	20	50	80	160
-- DI	0	5	10	10	10	35
Subtotal Title II	***2***	***27***	***56***	***98***	***140***	***323***
TITLE III: Demonstration Projects and Studies						
-- Medicare	0	0	0	0	2	2
-- DI: Extension of demonstration project authority	3	5	5	5	5	23
-- DI: $1 for $2 Benefit Offset Demonstration (CBO Est.)	0	0	7	13	18	38
Subtotal Title III	***3***	***5***	***12***	***18***	***25***	***63***
TITLE IV: Miscellaneous and Technical Amendments						
Prisoners						
-- DI	-3	-17	-21	-22	-26	-89
-- SSI	-2	-6	-7	-8	-10	-33
Clergy Open Season						
-- Medicare --REVENUES	-2	-2	-2	-2	-2	-10
-- OASI --REVENUES	-3	-6	-8	-8	-9	-34
-- DI -- REVENUES	0	-1	-1	-1	-1	-4
-- Adjustment for Individual Income Tax Effect	0	1	1	1	1	4
Attorney Fees						
-- DI	-19	-26	-26	-26	-26	-123
Expansion of Certain Anti-Fraud Provisions in Medicaid						
-- Medicare	0	-3	-5	-5	-5	-18
Restriction on Medicaid Payments for School-Based Services						
-- Medicaid	-3	-11	-16	-18	-22	-70
Change Lender Yields						
-- Student Loan Programs	0	0	0	0	0	0
Subtotal Title IV	***-32***	***-71***	***-85***	***-89***	***-100***	***-377***
TOTAL -- Titles I, II, III, & IV						
-- Medicaid	-1	0	8	18	25	49
-- Medicare	0	7	15	45	77	144
-- DI	-20	-36	-31	-25	-17	-129
-- SSI	-2	-7	-14	-15	-18	-56
-- Medicare Revenues	-2	-2	-2	-2	-2	-10
-- DI Revenues	0	-1	-1	-1	-1	-4
-- OASI Revenues	-3	-5	-7	-7	-8	-30
-- Student Loan Programs	0	0	0	0	0	0
Total	***-28***	***-44***	***-32***	***13***	***56***	***-36***
ON- & OFF-BUDGET SUMMARY						
Subtotal -- On-Budget Spending	-3	0	9	48	84	137
Subtotal -- On-Budget Revenues	-2	-2	-2	-2	-2	-10
On-Budget Total	*-5*	*-2*	*7*	*46*	*82*	*127*
Subtotal -- Off-Budget Spending	-20	-36	-31	-25	-17	-129
Subtotal -- Off-Budget Revenues	-3	-6	-8	-8	-9	-34
Off-Budget Total	*-23*	*-42*	*-39*	*-33*	*-26*	*-163*
ON- & OFF-BUDGET TOTAL	**-28**	**-44**	**-32**	**13**	**56**	**-36**

David Rowe

10/27/99 09:23:31 PM

Record Type: Record

To: Andy Rotherham/OPD/EOP@EOP

cc:
Subject: WIIA SAP

Andy -- here you go. The bolded language below is the "compromise" Jennings/Jeane Lambrew/ED/HHS came up with.

Oh, in case you don't have it, below is the website where you can get all the Administration's SAP's at:

http://www.whitehouse.gov/OMB/legislative/sap/

October 19, 1999

(House)

H.R. 1180 -Work Incentives Improvement Act
(Rep. Lazio (R) NY and 247 cosponsors)

The Administration has a deep and long-standing commitment to empowering and promoting the independence of people with disabilities, including removal of barriers for them to work. While the Administration supports H.R. 1180, there are policy and funding concerns that must be addressed. The President endorsed similar legislation last year, funded the proposal in his FY 2000 Budget, and urged the Congress to pass it in his State of the Union address. In addition, on several occasions, he has renewed his challenge to the Congress to pass legislation so that people with disabilities can work without fear of losing the health care they need.

The Administration, however, does remain seriously concerned that H.R. 1180 fails to provide certain key supports for individuals with disabilities who are returning to work that were included in the President's FY 2000 Budget as well as in the Senate-passed and House Commerce Committee versions of the bill. In particular:

H.R. 1180 does not include the provision in the House Commerce Committee- and Senate-passed bills that lifts the income and resource restrictions on the Medicaid buy-in option. This provision gives States more flexibility in designing their programs and allows people with disabilities to take middle-class jobs without losing the option to buy into Medicaid.

H.R. 1180 has inadequate funds for a demonstration program to provide Medicaid coverage to workers with medical conditions that could cause them to require cash assistance in the future. Fully funding this program with mandatory appropriations is critical to assure implementation and to obtain State support for efforts to encourage individuals with disabilities to return to work. The President's FY 2000 Budget included Medicare and Medicaid offsets for this purpose, and we will continue to work aggressively with the Congress to identify appropriate offsets.

H.R. 1180 gives no guarantee that Medicare coverage will always be available to people with disabilities

who work. The Administration urges that this guarantee be restored.

In addition, the Administration opposes the provision (Section 409) in H.R. 1180 that would modify the formula for calculating lender and secondary market interest payments on Department of Education guaranteed student loans. This change would undermine the HEA agreement on lender yields made just last year. The proposal would significantly increase lender and secondary market profits by transferring economic risk -- and potential cost -- to the Federal government while providing no additional benefits to students.

Americans with disabilities can and do bring tremendous talent and energy to the American workforce. We must not put people with disabilities in the untenable position of choosing between health care coverage and work. The Administration looks forward to working with the Congress to enact landmark bipartisan legislation that takes a significant step towards improving work opportunities for people with disabilities by increasing their access to health care and employment services, **while assuring that the bill's financing is adequate and based on sound policy.**

Pay-As-You-Go Scoring

H.R. 1180 would affect direct spending and receipts; therefore, it is subject to the pay-as-you-go (PAYGO) requirement of the Omnibus Budget Reconciliation Act of 1990. The Office of Management and Budget's preliminary scoring estimate for the bill is under development.

COUNCIL OF THE GREAT CITY SCHOOLS

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Date: 10/26

To:

Name: Dave Roe

Organization: OMB

Fax: 395 4875

From:

Name: Jeff Simering

Comments:

Sch-based Medicaid
MAJOR CONCERNS on page 2.

Phone ~~202~~ 393 2427
~~Home~~ 301 596 5059
Would welcome A quick discussion
on these ISSUES!

Pages: 3 (including this one)

Council of the Great City Schools
1301 Pennsylvania Avenue, N.W. ✦ Suite 702 ✦ Washington, D.C. ✦ 20004
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Council of the Great City Schools
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http://www.cgcs.org

October 26, 1999

SCHOOL-BASED MEDICAID SERVICES LIMITED BY H.R. 1180

To: Dave Roe
From: Jeff Simering
Re: H.R. 1180 Limitations on School-based Medicaid (quick modification of a prior memo)

Status: H.R. 1180 and S. 331 provide extended federal health and other benefits to disabled adults who become employed. However, the House bill (H.R. 1180) pays for these new benefits to disabled adults by restricting payments for school-based Medicaid services and with a number of other revenue offsets. It is ironic that additional benefits for disabled working adults (generally a good policy) are financed in part with cuts to school-based Medicaid services ($70 million over five years).

These school-based Medicaid offsets popped up last week in a similar Ways and Means Committee bill and were attached to H.R. 1180, which passed the House by a 400-vote margin. Despite Council efforts, this 11th hour maneuver ensured that virtually no member of Congress focused on the fact that services for disabled school children were being cut to pay for services for disabled adults.

The restrictive language in H.R. 1180 for school-based Medicaid services is so broad and ambiguous that many, if not most of currently reimbursed health-related services for IDEA children may be at risk of elimination. There are some legitimate arguments that transportation billing of Medicaid may be overused in some places, and that consultant fees of over 20% of billings may be a bit excessive. However, the seven pages of Medicaid limitation language of the bill represent significant overkill:

- Places new restrictions on the practice of billing for "bundled" services in schools (but not in any other health subsystem like early intervention, residential services, etc.) requiring actuarial basis and reconciliation, or other comparative basis;
- Places new restrictions on transportation services including to: those under age 21, IEP notations of medical need for transportation, using specially equipped or staffed vehicles, cost allocation attributable to medical need for transportation and allocated by the proportion of costs equal to the portion of the school day spent in activities related to Medicaid covered services;
- Places requirements for competitive bidding of contracts in connection with collection and submission of Medicaid claims, and prohibits contingent fee contracts;
- Requires coordination of services to prevent duplicative billing by managed care providers and schools, and prohibits payments to schools if managed care providers are receiving capitated or similar payments for such services in their contract with the State;
- Requires states to pass-thru Medicaid reimbursements based on the percentage paid by the state or local education agency;

- Mandates that HCFA establish a uniform methodology for school-based Medicaid services within 90 days

Problem Areas:

1. Limitations on bundling (though use by only a handful of Great City Schools) preclude a cost-effective method for non-Medicaid participating school districts to begin participation in the Medicaid. These limits are applied to school-based bundling but to no other bundling of services.
2. IDEA requires transportation in the least restrictive environment for disabled school children through age 21 not under age 21. It does not require special buses or special staffing, as does H.R. 1180, but does require a transportation need related to the disability which may be to a specialized service, to a specialized school (not the neighborhood school the child would otherwise attend) or require some special adaptation, scheduling or routing. No one knows how to allocate costs between what are a health-related service and what is not, particularly for severe and multiple disabilities which are generally physiological or psychological in original.
3. If a child is covered under a managed care provider contract, the H.R. 1180 language appears preclude school-based services reimbursements from the State (a nightmare waiting to happen!). Physical therapy, occupational therapy, nursing services etc. are generally part of a managed care contract and the prepaid rate. The language in H.R. 1180 appears to absolutely preclude school-based payments from the State Medicaid office (which is the current model) for these essential and mandated school-based services under IDEA. This provision could virtually eliminate school-based Medicaid services in some states, and still leave the school districts with the federal IDEA mandate and the financial cost of these services for this Medicaid eligible population.
4. The SEA may claim that its State categorical special education funds allow include health-related services as an allowable activity, therefore the State may claim the entire Medicaid reimbursement, and pass none through to the local school district.
5. HCFA has never been school-friendly. Its May 21st letter on school-based services was not only restrictive but misunderstood IDEA and school-based health services. Any uniform methodology mandated by HCFA even with consultation with SEAs and LEAs will likely be extremely restrictive. Developing this uniform methodology within 90 days will likely produce multiple errors and further limit our school-based service reimbursements.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply in the case of any attorney with respect to whom a fee for services is required to be certified for payment from a claimant's past-due benefits pursuant to subsection (a)(4)(A) or (b)(4)(A) of section 206 of the Social Security Act after—

(1) December 31, 1999, or

(2) the last day of the first month beginning after the month in which this Act is enacted.

SEC. 407. PREVENTION OF FRAUD AND ABUSE ASSOCIATED WITH CERTAIN PAYMENTS UNDER THE MEDICAID PROGRAM.

(a) REQUIREMENTS FOR PAYMENTS.—Section 1903(i) of the Social Security Act (42 U.S.C. 1396b(i)) (as amended by section 201(a)(3)(B)) is amended further—

(1) in paragraph (20), by striking the period at the end and inserting "; or"; and

(2) by inserting immediately after paragraph (20) the following:

"(21) with respect to any amount expended for an item or service provided under the plan, or for any administrative expense incurred to carry out the plan, which is provided or incurred by, or on behalf of, a State or local educational agency or school dis-

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503
Education Branch
Education, Income Maintenance, and Labor Division

Fax Cover

Date: 10/27/99 **Time:** 8:30

To: ANDY ROTHERHAM

Fax Number: 6-5581

From:

____ Wayne Upshaw	____ Lorenzo Rasetti
____ Mary Cassell	✓ David Rowe
____ Jennifer Kron	____ Wei-min Wang
____ Leslie Mustain	____ Peter Weber
____ Quirina Orozco	____ Other

Number of pages: Cover + 4

Notes Medicaid School-based health services.

Education Branch Fax Number: 202-395-4875
Voice Confirmation: 202-395-5880

Jackie House

Charles L. Pizer

Special Assistant to the Mayor
Director of Chicago Public Schools Washington Office
1530 Wilson Boulevard
Suite 900
Arlington, Virginia 22209
(Tel) 202-812-8889 (Fax) 703-312-4343

To: Andy

Fax Number: 456-5581

From: Chuck

Total Number of Pages Including Cover: 5

COMMENTS:

Andy

FYI

Chuck

If you do not receive total transmission, please contact us at 703-312-4343

THE WHITE HOUSE

WASHINGTON

DOMESTIC POLICY COUNCIL

FACISMILE FOR: David Rowe

DATE: _____

TELEPHONE: 5-4875

FAX: _____

FACISMILE FROM: ANDREW ROTHERHAM

TELEPHONE: (202) 456-5575

FAX: (202) 456-5581

NUMBER OF PAGES INCLUDING COVER: _____

COMMENTS: Memo →

CHICAGO PUBLIC SCHOOLS

Paul G. Vallas
Chief Executive Officer

October 25, 1999

The Honorable J. Dennis Hastert - Speaker of the House
United States Congress
2263 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Speaker:

Late last week, the House approved H.R. 1180 to provide work incentives to low-income disabled adults and to offset benefit costs by reducing Medicaid revenue to schools for health services to low-income children with disabilities. This offset was accomplished hastily and at the last minute, without hearings or a mark-up in the Commerce Committee.

Various Federal laws mandate that public schools provide health-related services to students with disabilities in order for them to receive an equal educational opportunity. Nationally, the cost of educating children with disabilities is 250% greater than for their nondisabled peers. Yet, the Federal government provides only 8% of the special education funding necessary to meet their needs, far short of the 40% promised when the Individuals with Disabilities Act (IDEA) was first enacted. Instead of finding ways to decrease Federal financial support to schools for children with disabilities, the government should be identifying necessary additional resources that will ultimately benefit all children.

During the last decade, school districts have been authorized to receive Medicaid reimbursement for eligible services. School districts have been slow to realize this revenue source, however, due to the unfamiliar billing complexities involved. As more districts, like the Chicago Public Schools, have gained the necessary knowledge and expertise, reimbursement has increased accordingly.

Instead of anticipating an increase in school-based Medicaid revenue based on a realistic understanding of the scope and nature of school health services, the increase has been met with suspicion and alarm. The House action is consistent with HCFA's reluctance to work directly with school district representatives to gain a meaningful comprehension of school-based health services. Only after my staff and I met with HCFA representatives last summer did the agency finally agree to include our representatives in its discussions on "bundling," i.e., grouped itemization. Our representatives continue to be excluded from broader discussions involving a manual HCFA is developing to address the process of administrative outreach.

We live in a time of escalating education costs, relatively small financial assistance from the Federal government, and expanding roles of school districts in the Children's Health Insurance Program (CHIP) enrollment effort. Medicaid is a *critical* revenue source for schools. We urge the Conference Committee to resist the House's Solomon-like offering of reduced school-based Medicaid health services to offset increased disabled adult benefits.

IMMEDIATE ACTION NEEDED NOW!
Eliminate the Rider (Sec. 407) on HR 1180

- H.R. 1180 provides work incentives to disabled adults by reducing Medicaid payments to schools. This offset was accomplished hastily and at the last minute, without hearings or a mark-up in the Commerce Committee. It is now in Committee for reconciliation.

- Various Federal laws require school districts to provide health-related services to students with disabilities, regardless of whether they attend publicly or privately funded schools. Nationally, the cost of educating children with disabilities is **250% greater than for their nondisabled peers**. Yet, the Federal government provides only **8% of the special education funding** necessary to meet their needs, far short of the **40% promised when the Individuals with Disabilities Act (IDEA) was first enacted**.

- Instead of finding ways to **decrease** Federal financial support to schools for children with disabilities, the government should be identifying necessary **additional resources** that will ultimately benefit all children.

- We live in a time of escalating education costs, relatively small financial assistance from the Federal government, and expanding roles of school districts in the Childrens Health Insurance Program (CHIP) enrollment effort. Medicaid is a *critical* revenue source for schools.

- If H.R. 1180 and S331 pass Conference Committee with Section 407 in place, school districts nationwide will lose millions of dollars in funding to support disabled children.

WE NEED YOUR SUPPORT

Please use your resources to convince the Conference Committee that it must resist the House's Solomon-like offering that would reduce school-based Medicaid health services to increase disabled adult benefits. If you would like additional information, please call Sue Gamm, Chief Specialized Services Officer of the Chicago Public Schools, at 773.553.1800.

The attached letter provides detailed information regarding the devastating impact H.R. 1180 would have on health services for children with disabilities.

Thank you for your support.

trict, unless payment for the item, service, or administrative expense is made in accordance with a methodology approved in advance by the Secretary under which—

"(A) in the case of payment for—

"(i) a group of individual items, services, and administrative expenses, the methodology—

"(I) provides for an itemization to the Secretary that assures accountability of the cost of the grouped items, services, and administrative expenses and includes payment rates and the methodologies underlying the establishment of such rates;

"(II) has an actuarially sound basis for determining the payment rates and the methodologies; and

"(III) reconciles payments for the grouped items, services, and administrative expenses with items and services provided and administrative expenses incurred under this title; or

"(ii) an individual item, service, or administrative expense, the amount of pay-

ment for the item, service, or administrative expense does not exceed the amount that would be paid for the item, service, or administrative expense if the item, service, or administrative expense were incurred by an entity other than a State or local educational agency or school district, unless the State can demonstrate to the satisfaction of the Secretary a higher amount for such item, service, or administrative expense; and

"(B) in the case of a transportation service for an individual under age 21 who is eligible for medical assistance under this title (whether or not the child has an individualized education program established pursuant to part B of the Individuals with Disabilities Education Act)—

"(i) a medical need for transportation is noted in such an individualized education program (if any) for the individual, including such an individual residing in a geographic area within which school bus transportation is otherwise not provided;

"(ii) in the case of a child with special medical needs, the vehicle used to furnish

such transportation service is specially equipped or staffed to accommodate individuals with special medical needs; and

"(iii) payment for such service only—

"(I) is made with respect to costs directly attributable to the costs associated with transporting such individuals whose medical needs require transport in such a vehicle; and

"(II) reflects the proportion of transportation costs equal to the proportion of the school day spent by such individuals in activities relating to the receipt of covered services under this title or such other proportion based on an allocation method that the Secretary finds reasonable in light of the benefit to the program under this title and consistent with the cost principles contained in OMB Circular A–87; or

"(22) with respect to any amount expended for an item or service under the plan or for any administrative expense to carry out the plan provided by or on behalf of a State or local agency (including a

State or local educational agency or school district) that enters into a contract or other arrangement with a person or entity for, or in connection with, the collection or submission of claims for such expenditures, unless, notwithstanding section 1902(a)(32), the agency—

"(A) uses a competitive bidding process or otherwise to contract with such person or entity at a reasonable rate commensurate with the services performed by the person or entity; and

"(B) requires that any fees (including any administrative fees) to be paid to the person or entity for the collection or submission of such claims are identified as a non-contingent, specified dollar amount in the contract."; and

(3) in the third sentence, by striking "(17), and (18)" and inserting "(17), (18), (19), and (21)".

(b) PROVISION OF ITEMS AND SERVICES THROUGH MEDICAID MANAGED CARE ORGANIZATIONS.—

(1) CONTRACTUAL REQUIREMENT.—Section 1903(m)(2)(A) of the Social Security Act (42 U.S.C. 1396b(m)(2)(A)) is amended by redesignating clause (xi) (as added by section 4701(c)(3) of the Balanced Budget Act of 1997) as clause (xiii), by striking

"and" at the end of clause (xi), and by inserting after clause (xi) the following:

"(xii) such contract provides that with respect to payment for, and coverage of, such services, the contract requires coordination between the State or local educational agency or school district and the medicaid managed care organization to prevent duplication of services and duplication of payments under this title for such services."

(2) PROHIBITION ON DUPLICATIVE PAYMENTS.—

(A) IN GENERAL.—Section 1903(i) of the Social Security Act (42 U.S.C 1396b(i)), as amended by subsection (a), is amended—

(i) in paragraph (22), by striking the period and inserting "; or"; and

(ii) by adding at the end the following:

"(23) with respect to any amount expended under the plan for an item, service, or administrative expense for which payment is or may be made directly to a person or entity (including a State or local educational agency or school district) under the State plan if payment for such item, service, or administrative expense

was included in the determination of a prepaid capitation or other risk-based rate of payment to an entity under a contract pursuant to section 1903(m).".

(B) CONFORMING AMENDMENT.—The third sentence of section 1903(i) of such Act (42 U.S.C. 1396b(i)), as amended by subsection (a)(3), is amended by striking "and (21)" and inserting "(21), and (23)".

(c) ALLOWABLE SHARE OF FFP WITH RESPECT TO PAYMENT FOR SERVICES FURNISHED IN SCHOOL SETTING.—Section 1903(w)(6) of the Social Security Act (42 U.S.C. 1396b(w)(6)) is amended—

(1) in subparagraph (A), by inserting "subject to subparagraph (C)," after "subsection."; and

(2) by adding at the end the following:

"(C) In the case of any Federal financial participation amount determined under subsection (a) with respect to any expenditure for an item or service under the plan, or for any administrative expense to carry out the plan, that is furnished by a State or local educational agency or school district, the State shall provide that there is paid to the agency or district a percent of such amount that is not less than the percentage of such expenditure or expense that is paid by such agency or district.".

(d) UNIFORM METHODOLOGY FOR SCHOOL-BASED ADMINISTRATIVE CLAIMS.—Not later than 90 days after the date of enactment of this Act, the Administrator of the Health Care Financing Administration, in consultation with State medicaid and State educational agencies and local school systems, shall develop and implement a uniform methodology for claims for payment of administrative expenses furnished under title XIX of the Social Security Act by State or local educational agencies or school districts. Such methodology shall be based on standards related to time studies and population estimates and a national standard for determining payment for such administrative expenses.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section (other than by subsection (b)) shall apply to items and services provided on and after the date of enactment of this Act, without regard to whether implementing regulations are in effect.

(2) MANAGED CARE AMENDMENTS.—The amendments made by subsection (b) shall apply to contracts entered into or renewed on or after the date of the enactment of this Act.

(3) REGULATIONS.—The Secretary of Health and Human Services shall promulgate such final

regulations as are necessary to carry out the amendments made by this section not later than 1 year after the date of the enactment of this Act.

SEC. 408. EXTENSION OF AUTHORITY OF STATE MEDICAID FRAUD CONTROL UNITS.

(a) EXTENSION OF AUTHORITY TO INVESTIGATE AND PROSECUTE FRAUD IN OTHER FEDERAL HEALTH CARE PROGRAMS.—Section 1903(q)(3) of the Social Security Act (42 U.S.C. 1396b(q)(3)) is amended—

(1) by inserting "(A)" after "in connection with"; and

(2) by striking "title." and inserting "title; and

(B) upon the approval of the Inspector General of the relevant Federal agency, any aspect of the provision of health care services and activities of providers of such services under any Federal health care program (as defined in section 1128B(f)(1)), if the suspected fraud or violation of law in such case or investigation is primarily related to the State plan under this title.".

(b) RECOUPMENT OF FUNDS.—Section 1903(q)(5) of such Act (42 U.S.C. 1396b(q)(5)) is amended—

(1) by inserting "or under any Federal health care program (as so defined)" after "plan"; and

American Association of School Administrators

October 18, 1999

Dear Congressman:

We are extremely concerned that the Rules Committee may—today—act precipitously over a piece of legislation, H.R. 3070 (specifically Section 408), which would have a severe and profoundly negative impact on local school districts serving poor and disabled children.

This bill, scheduled for Rules action today, would, despite its title, limit a school district's recovery of Medicaid-related services, for poor/disabled children, under the assumption that there is widespread "Fraud and Abuse" in this recovery process. We firmly believe this is an erroneous assumption and urge a more comprehensive, open, public discussion before any action is taken on Sec. 408 of H.R. 3070.

We, as the professional association of 14,000 local school superintendents and school executives, were never consulted about this section of H.R. 3070, and we further understand that no group representing local educators had been consulted or asked to participate in any hearing on this matter. In fact, to our knowledge, the bill was not the subject of hearings, but was introduced and immediately marked-up and reported to the full House last week.

We ask that Section 408 be removed and referred back for more thorough consideration, because it would have direct and extremely negative impact on the manner and recovery of costs in a number of areas. Of particular concern is how HMO's, it appears, would be allowed to stop assisting disabled students. Because the Supreme Court has acted in this area, we are keenly aware that new medical costs are already being shifted to schools. Other issues of concern deal with transportation, bundling of claims, and excessive amounts to state-level agencies.

Thank you for your consideration of our views on this highly controversial proposal.

Sincerely,

Bruce Hunter
Director of Public Affairs

1801 North Moore Street ▲ Arlington, Virginia 22209-1813 ▲ 703.528.0700 ▲ Fax 703.841.1543 ▲ http://www.aasa.org

Jeanne Lambrew
10/27/99 02:16:09 PM

Record Type: Record

To: Andy Rotherham/OPD/EOP@EOP

cc:
Subject: Joint HCFA and Ed Comments

---------- Forwarded by Jeanne Lambrew/OPD/EOP on 10/27/99 02:15 PM ----------

Anne E. Tumlinson 10/27/99 02:06:43 PM

Record Type: Record

To: Jeanne Lambrew/OPD/EOP@EOP, shammersten@hcfa.gov@inet, bwashington2@hcfa.gov@inet

cc: David Rowe/OMB/EOP@EOP, Jeffrey A. Farkas/OMB/EOP@EOP, Lillian S. Spuria/OMB/EOP@EOP, Mark E. Miller/OMB/EOP@EOP

Subject: Joint HCFA and Ed Comments

Dept of Education and HCFA comments on Medicaid School-Based Health Services Offset Included in HR 1180.

Effective date for bundling methodology requirements. According to Section 407(e)(1), the requirements of section 407(a)(2)(A) which addresses requirements for bundling methodologies would go into effect immediately upon enactment of the law. We are concerned that these changes, without an appropriate transition period, will cause significant disruption in billing mechanisms for schools in the middle of a school and budget year. We particularly are concerned that States which currently have approved bundling methodologies will not be able to immediately come into compliance with the new requirements. Unless States are provided adequate time to make any needed changes in their plans and methodologies, these changes could substantially limit their ability to obtain reimbursement for services. We would recommend allowing for a transition period of at least six months, starting from the date of enactment, to come into compliance with the new requirements specified in section 407(a)(2)(A).

Transportation. We would recommend modifying section 407(a)(2)(B) to make it clear that Medicaid reimbursement for transportation services from the school to a community provider of a reimbursable service is allowable even in cases where the student does not need a specially equipped or staffed vehicle. Under current HCFA policy, Medicaid will reimburse for transportation services from a school to a community provider in a non-specialized vehicle and in cases where no specialized staff are required onboard the bus during the transportation to the service. These services are particularly important for children with disabilities who are entitled to receive related services during the school day.

Consultation on methodology for administrative claims. Section 407(d) does not include the Department of Education among the list of entities HCFA is required to consult with in developing a uniform methodology for administrative claims, even though it does include State educational agencies and local school systems. We would recommend including the Department of Education among

these entities.

Other HCFA comments
It appears that section 407(a)(2)(A) would apply bundling methodology requirements to administrative claims or it presupposes that administrative claims are part of the bundle, which is not the case. Medicaid reimbursement for administrative claims is not based on a bundling methodology, instead, it is based on a cost allocation plan. Because bundling methods are not used in the case of administrative claims, we would recommend removing references to administrative expenses in this section.

Please clarify the intent of paragraph 407(a)(2)(A)(III) which addresses reconciliation of payments for bundled services.

In section 407(d), we would recommend substituting the word "guidelines" in place of "methodology."

MEDICAID REIMBURSEMENT FOR SCHOOL BASED HEALTH SERVICES

SUMMARY

GAO released a study in June 1999 that detailed the exponential increase in Medicaid claims for school based services over the past 4 years (from $82 million to $469 million in the 10 states surveyed) and testified before the Senate Finance Committee that the financing mechanisms currently being used by states were similar in practice to the recycling schemes used in the late 1980s that substituted provider taxes and donations for state Medicaid match. To address this problem, HCFA released new guidance clarifying and refining its policy on reimbursement for school based services and pledging to release additional guidance in the Fall. This guidance was well received by members of Congress, but has caused considerable unrest in the states.

SERVICES PROVIDED AT SCHOOL BASED CLINICS

Medical services provided by school based clinics include: routine and preventive medical exams, diagnosis and treatment of acute conditions such as eye, ear, or upper respiratory infections, monitoring and treatment of chronic conditions, such as epilepsy and diabetes, and services provided to children with special health care needs as required under the Individuals with Disabilities Act.

MEDICAID REIMBURSEMENT FOR SCHOOL BASED CLINICS

In order to be covered by Medicaid, the services provided must be listed under section 1905(a), delivered by a Medicaid provider, and be considered medically necessary for the individual receiving the service.

Currently, 41 states enroll schools as qualified providers under the Medicaid program for covered services provided by school personnel and other qualified practitioners contracting with the school. Medicaid is also authorized to reimburse schools for certain administrative costs, including conducting Medicaid outreach and application assistance and arranging appointments with health care providers. For administrative activities related to Medicaid eligible and non-eligible children, the cost of the activities must be allocated to Medicaid in the appropriate proportion and specified in an approved cost allocation plan.

There are three different ways that Medicaid can reimburse for school based health services: fee for service, bundling, and capitation.

- **Fee for service reimbursement.** Under traditional fee for service reimbursement, each service provided to a Medicaid beneficiary generates a claim which is submitted to the state Medicaid agency. Thirty out of the 41 states providing school based services submit fee for service claims.

- **Capitation.** The state Medicaid agency pays the school a per student rate that covers a package of services. The cost of the capitated rate is determined through a competitive bidding process. Although this is an option, no states reimburse their schools in this manner.

- **Bundling.** More recently, schools have begun to bundle together a package of medical services expected to be provided to children with special health care needs served under individual education plans (IEPs), who have varying degrees of disability, and charge the state Medicaid agency a single payment rate. The cost of the bundled rate is calculated by reviewing the average cost of the services received by a statistically valid sample of children at each level of disability. States are required to periodically review the cost of the claims and reconcile them with services provided. Six states submit bundled claims for reimbursement; three states use a combination of bundling and fee for service claims.

HCFA had no information available on the reimbursement methodologies used by the remaining 8 states.

ABUSE OF MEDICAID REIMBURSEMENT FOR SCHOOL BASED SERVICES

There are three ways for states to use the provision of school based services under Medicaid to shift the burden of costs traditionally assumed by the state to the Federal government.

- **Inappropriate claiming of administrative costs under Medicaid.** HCFA estimates that 18 states are currently claiming reimbursement for administrative costs under Medicaid. Although there is no nationwide estimate of the recent increase in Medicaid reimbursement for the administrative costs associated with school based services, a survey of 10 states conducted by GAO indicated a five-fold increase in claims over the past four years ($82 million to $462 million). Two of the states surveyed, Illinois and Michigan, accounted for most of the increases in administrative cost claims over this period of time. In Illinois, claims increased from $82 million in 1997 to $145 million in 1998; in Michigan, claims increased from $79 million in 1996 to $227 million in 1997.

  Insufficient Federal oversight has led to an increase in inappropriate claiming of administrative costs. For example, a school will request 100 percent reimbursement from Medicaid for the cost of a principal's salary because of their role as a "program administrator" of the Medicaid services being provided in their school, regardless of the amount of time they spend on activities related to the provision of services to children with special health care needs. In some school districts, the administrative costs they claim are higher than the costs of the services they provide. In one state, the regional office identified and deferred over $33 million in inappropriate administrative claims.

  HCFA recently issued guidance stating that they are reviewing practices related to State claiming for school-based administrative activities and plan to publish a guide clarifying Federal policy this Fall.

- **Bundling payments without cost reconciliation.** Out of the six states which submit bundled claims, only one of them reviews and reconciles their claims on a regular basis (Connecticut). The remaining states (Massachusetts, New Jersey, North Carolina, Utah, and Kansas) do not.

  Failure to review and reconcile claims makes the Medicaid program vulnerable to excessive overpayments for services on two fronts. First, states artificially inflate the rate charged for health care services. Second, states may not provide all of the services included under the bundled rate to students. For example, an on-site review of four school districts in Massachusetts by the HCFA regional office revealed claims of $700,000 for services that were never provided to students.

  Recent guidance published by HCFA eliminates the use of a bundled rate for reimbursement for school based services and states that these claims will be disallowed if submitted after July 1, 1999.

- **Claiming inappropriate transportation costs.** HCFA estimates that 16 states are currently receiving Medicaid reimbursement for the cost associated with busing students – with and without special health care needs – to and from school. Medicaid policy states that reimbursement for transportation costs associated with school based services is available if the child receives a medical service in school on that day, if the transportation takes place in a vehicle equipped for children with special health care needs, and if transportation is listed as a needed service in the child's individual education plan. The Department of Education's policy is that children who ride to school in the regular bus should not have transportation listed in the child's individual education plan.

  However, these states are including transportation in the individual education plans of all children with special health care needs, whether they ride to school in the regular buses or not, in order to claim Federal match.

  Recent guidance published by HCFA reiterates that Medicaid should not be billed for the transportation costs for children unless they require transportation in a vehicle adapted to serve the needs of the disabled, and states that these claims will be disallowed if submitted after July 1, 1999.

FOCUS OF GAO INVESTIGATION

The GAO report, which focuses primarily on the claiming of administrative costs, indicates that some school district and state claiming procedures are designed to maximize their receipt of Medicaid funds through suspect financing mechanisms. In four out of the 10 states surveyed, a portion of the Federal reimbursement for services provided at schools is retained in the state's general revenue funds. In FY 1998, Federal dollars contributed about $8 million in Illinois and $47 million in Michigan to the state general revenue funds. Since Michigan schools began claiming for administrative costs, the state has retained almost $106 million of the Federal share.

In their testimony before the Finance Committee, the GAO compared these financing arrangements to the financing mechanism that used provider taxes and donations as a way to increase Federal matching dollars without increase state expenditures before it was outlawed by the passage of OBRA 1993.

GAO also notes that a number of private firms, employed by school districts to help them maximize their Federal reimbursement, typically receive as compensation a share of the revenue, ranging from 3 to 25 percent, generated by the claims the school submits.

NEXT STEPS

Issuing guidance on administrative claiming. HCFA and OMB are working internally to develop and release guidance on reimbursement for administrative costs associated with school based services by the Fall. A number of private firms, most notably in Texas and New York, have been lobbying HCFA, the First Lady's Office, and the Vice President's Office, to ensure that they have input into the guidance that is being developed. Because this issue is so sensitive and has been pinpointed as the primary source of the fraud and abuse, HCFA is not taking private sector or state input as they develop their guidance.

Federal-state workgroup on bundling of services. HCFA has developed a Federal-state workgroup to bring the states who currently bundle their reimbursement claims into compliance with the new guidance. The states are using the workgroup as a forum to lobby HCFA to change its guidance. Although HCFA is currently considering options, OMB feels very strongly that they should not renege on the original guidance in any way.

Devorah R. Adler
10/26/99 11:06:45 AM

Record Type: Record

To: Andy Rotherham/OPD/EOP@EOP

cc: Jeanne Lambrew/OPD/EOP@EOP
Subject: JK and school based

Hello --

The school based offset gets us $70 million over 5. OMB does not think that CBO broke it out in their official scoring, and so it is probably not available.

The person that you really need to speak to on this issue is Jeanne Lambrew (65377) -- she's much more up to speed on the intricacies of the offset issue. I'll review your questions from this morning with her so that she can be most helpful.

However, I am happy to help if there's anything else you need.

Thanks.

Devorah

David Rowe

10/20/99 03:01:29 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: See the distribution list at the bottom of this message

Subject: Conference call on WIIA Medicaid school-based health services language

Tomorrow's conference call on the Medicaid school-based health services language in the House version of the Workforce Incentives Improvements Act will be from **11:00am until noon**. To get onto the conference call, dial 456-6766 and then enter 8535.

If you have questions, let me know. Thanks.

Jeanne: Anne Tumlinson is inviting the people from HCFA you mentioned in your email.

Message Sent To:

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