

109TH CONGRESS
2^D SESSION

S. 3705

To amend title XIX of the Social Security Act to improve requirements under the Medicaid program for items and services furnished in or through an educational program or setting to children, including children with developmental, physical, or mental health needs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 20, 2006

Mr. KENNEDY (for himself, Mr. HARKIN, Mr. JEFFORDS, Mr. BINGAMAN, Mrs. CLINTON, Mrs. MURRAY, Mr. REED, Mr. DODD, Ms. MIKULSKI, Mr. DAYTON, Ms. STABENOW, and Mr. SCHUMER) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title XIX of the Social Security Act to improve requirements under the Medicaid program for items and services furnished in or through an educational program or setting to children, including children with developmental, physical, or mental health needs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting Children’s
5 Health in Schools Act of 2006”.

1 **SEC. 2. REQUIREMENTS UNDER THE MEDICAID PROGRAM**
2 **FOR ITEMS AND SERVICES FURNISHED IN OR**
3 **THROUGH AN EDUCATIONAL PROGRAM OR**
4 **SETTING TO CHILDREN, INCLUDING CHIL-**
5 **DREN WITH DEVELOPMENTAL, PHYSICAL, OR**
6 **MENTAL HEALTH NEEDS.**

7 (a) REQUIREMENTS FOR PAYMENTS.—Section 1903
8 of the Social Security Act (42 U.S.C. 1396b) is amend-
9 ed—

10 (1) in subsection (i)—

11 (A) in paragraph (22), by striking the pe-
12 riod at the end and inserting “; or”; and

13 (B) by inserting after paragraph (22), the
14 following new paragraphs:

15 “(23) with respect to any amount expended by,
16 or on behalf of, the State (including by a local edu-
17 cational agency in the State or the lead agency in
18 the State with responsibility for administering part
19 C of the Individuals with Disabilities Education Act)
20 for an item or service provided under the State plan
21 in or through an educational program or setting, or
22 for any administrative cost incurred to carry out the
23 State plan in or through such a program or setting,
24 or for a transportation service for an individual who
25 has not attained age 21, unless the requirements of
26 subsection (y) are met; or

1 “(24) with respect to any amount expended for
2 an item or service provided under the State plan in
3 or through an educational program or setting, or for
4 any administrative cost incurred to carry out the
5 plan in or through such a program or setting by, or
6 on behalf of, the State through an agency that is not
7 the State agency with responsibility for admin-
8 istering the State plan (including a local educational
9 agency in the State or the lead agency in the State
10 with responsibility for administering part C of the
11 Individuals with Disabilities Education Act) and
12 that enters into a contract or other arrangement
13 with a person or entity for or in connection with the
14 collection or submission of claims for such an ex-
15 penditure or cost, unless the agency—

16 “(A) if not a public agency operating a
17 consortium with other public agencies, uses a
18 competitive bidding process or otherwise to con-
19 tract with such person or entity at a reasonable
20 rate commensurate with the services performed
21 by the person or entity; and

22 “(B) requires that any fees (including any
23 administrative fees) to be paid to the person or
24 entity for the collection or submission of such

1 claims are identified as a non-contingent, speci-
 2 fied dollar amount in the contract.”; and

3 (2) by adding at the end the following new sub-
 4 section:

5 “(y) REQUIREMENTS FOR FEDERAL FINANCIAL PAR-
 6 TICIPATION FOR FURNISHING MEDICAL ASSISTANCE (IN-
 7 CLUDING MEDICALLY NEEDED TRANSPORTATION) IN OR
 8 THROUGH AN EDUCATIONAL PROGRAM OR SETTING.—
 9 For purposes of subsection (i)(23), the requirements of
 10 this subsection are the following:

11 “(1) APPROVED METHODOLOGY FOR EXPENDI-
 12 TURES FOR BUNDLED ITEMS, SERVICES, AND AD-
 13 MINISTRATIVE COSTS.—

14 “(A) IN GENERAL.—In the case of any
 15 amount expended by, or on behalf of, the State
 16 for a bundle of individual items, services, and
 17 administrative costs under the State plan that
 18 are furnished in or through an educational pro-
 19 gram or setting, the expenditure must be made
 20 in accordance with a methodology approved by
 21 the Secretary which—

22 “(i) provides for an itemization to the
 23 Secretary in a manner that ensures ac-
 24 countability of the cost of the bundled
 25 items, services, and administrative costs

1 and includes payment rates and the meth-
2 odologies underlying the establishment of
3 such rates;

4 “(ii) has a sound basis for deter-
5 mining such payment rates and methodolo-
6 gies; and

7 “(iii) matches payments for the bun-
8 dled items, services, and administrative
9 costs with corresponding items and services
10 provided and administrative costs incurred
11 under the State plan.

12 “(B) RULE OF CONSTRUCTION.—Nothing
13 in subparagraph (A) shall be construed as—

14 “(i) requiring a State to establish and
15 apply such a methodology through a State
16 plan amendment;

17 “(ii) requiring a State with such an
18 approved methodology to obtain the ap-
19 proval of the Secretary for any increase in
20 rates of reimbursement that are estab-
21 lished consistent with such methodology; or

22 “(iii) prohibiting the Secretary from
23 reviewing a State’s costs for the individual
24 items, services, and administrative costs
25 that make up a proposed bundle of items,

1 services, and costs as a condition of ap-
2 proval of the methodology that the State
3 will establish to determine the rate of reim-
4 bursement for such bundle of items, serv-
5 ices, and costs.

6 “(2) APPLICATION OF MARKET RATE FOR INDI-
7 VIDUAL ITEMS, SERVICES, ADMINISTRATIVE
8 COSTS.—In the case of an amount expended by, or
9 on behalf of, the State for an individual item, serv-
10 ice, or administrative cost under the State plan that
11 is furnished in or through an educational program
12 or setting, the State must establish that the amount
13 expended—

14 “(A) does not exceed the amount that
15 would have been paid for the item, service, or
16 administrative cost if the item or service was
17 provided or the cost was incurred by an entity
18 in or through a program or setting other than
19 an educational program or setting; or

20 “(B) if the amount expended for the item,
21 service, or administrative cost is higher than
22 the amount described in subparagraph (A), was
23 necessary.

24 “(3) TRANSPORTATION SERVICES.—

1 “(A) IN GENERAL.—In the case of an
2 amount expended by, or on behalf of, the State
3 for furnishing in or through an educational pro-
4 gram or setting a transportation service for an
5 individual who has not attained age 21 and who
6 is eligible for medical assistance under the
7 State plan, the State must establish that—

8 “(i) a medical need for transportation
9 is specifically listed in the individualized
10 education program for the individual estab-
11 lished pursuant to part B of the Individ-
12 uals with Disabilities Education Act or, in
13 the case of an infant or a toddler with a
14 disability, in the individualized family serv-
15 ice plan established for such infant or tod-
16 dler pursuant to part C of such Act, or is
17 furnished to the individual pursuant to sec-
18 tion 504 of the Rehabilitation Act of 1973;

19 “(ii) the vehicle used to furnish such
20 transportation service is specially equipped
21 or staffed to accommodate individuals who
22 have not attained age 21 with develop-
23 mental, physical, or mental health needs;
24 and

1 “(iii) payment for such service is
2 made only for costs directly attributable to
3 costs associated with transporting individ-
4 uals who have not attained age 21 and
5 whose developmental, physical, or mental
6 health needs require transport in such a
7 vehicle in order to receive the services for
8 which medical assistance is provided under
9 the State plan.

10 “(B) RULE OF CONSTRUCTION.—Nothing
11 in subparagraph (A) shall be construed as
12 modifying the obligation of a State to ensure
13 that an individual who has not attained age 21
14 and who is eligible for medical assistance under
15 the State plan receives necessary transportation
16 services to and from a provider of medical as-
17 sistance in or through a program or setting
18 other than an educational program or setting.”.

19 (b) REQUIREMENTS FOR THE PROVISION OF ITEMS
20 AND SERVICES THROUGH MEDICAID MANAGED CARE OR-
21 GANIZATIONS.—

22 (1) CONTRACTUAL REQUIREMENTS.—Section
23 1903(m)(2) of the Social Security Act (42 U.S.C.
24 1396b(m)(2)) is amended—

1 (A) in subparagraph (A), by inserting after
2 clause (i) the following new clause:

3 “(ii) the contract with the entity satisfies the
4 requirements of subparagraph (C) (relating to pay-
5 ment for, and coverage of, such services under an in-
6 dividual’s education program, an individualized fam-
7 ily service plan, or when furnished in or through an
8 educational program or setting);” and

9 (B) by inserting after subparagraph (B),
10 the following new subparagraph:

11 “(C) For purposes of clause (ii) of subparagraph (A),
12 the requirements of this subparagraph are the following:

13 “(i) The contract with the entity specifies the
14 coverage and payment responsibilities of the entity
15 in relation to medical assistance for items and serv-
16 ices that are covered under the State plan and in-
17 cluded in the contract, when such items and services
18 are furnished in or through an educational program
19 or setting.

20 “(ii) In any case in which the entity is obligated
21 under the contract to pay for items and services cov-
22 ered under the State plan, the contract with the en-
23 tity requires the entity to—

24 “(I) enter into a provider network service
25 agreement with the qualified provider or pro-

1 viders furnishing such items or services in or
2 through an educational program or setting;

3 “(II) promptly pay such providers at a rate
4 that is at least equal to the rate that would be
5 paid to a provider furnishing the same service
6 in a non-educational program or setting; and

7 “(III) treat as final and binding deter-
8 minations by State licensed providers or pro-
9 viders eligible for reimbursement under the
10 State plan working in an educational program
11 or setting regarding the medical necessity of an
12 item or service.

13 “(iii) The contract with the entity specifies the
14 obligation of the entity to ensure that providers of
15 items or services that are furnished in or through an
16 educational program or setting refer children fur-
17 nished such items or services to the entity and its
18 provider network for additional services that are not
19 available in or through such program or setting but
20 that are covered under the State plan and included
21 in the entity’s contract with the State.

22 “(iv) The contract with the entity requires, with
23 respect to payment for, and coverage of, services for
24 which the entity is responsible for, that the entity

1 must demonstrate that the entity has established
2 procedures to—

3 “(I) ensure coordination between the State,
4 a local educational agency and the lead agency
5 in the State with responsibility for admin-
6 istering part C of the Individuals with Disabil-
7 ities Education Act with respect to those serv-
8 ices for an individual who has not attained age
9 21 and who is eligible for medical assistance
10 under the State plan (including an individual
11 who has an individualized education program
12 established pursuant to part B of the Individ-
13 uals with Disabilities Education Act or other-
14 wise or an infant or toddler with a disability
15 who has an individualized family service plan
16 established pursuant to part C of such Act)
17 which are required for the individual under the
18 individual’s education program or the individ-
19 ualized family service plan, or are furnished to
20 the individual pursuant to section 504 of the
21 Rehabilitation Act of 1973 and which are not
22 specifically included in the services required
23 under the contract, but are the responsibility of
24 the State, a local educational agency, or the
25 lead agency in the State with responsibility for

1 administering part C of the Individuals with
2 Disabilities Education Act; and

3 “(II) prevent duplication of services and
4 payments under this title with respect to items
5 and services covered under the State plan that
6 are furnished in or through an educational pro-
7 gram or setting to such individuals enrolled
8 under the contract.”.

9 (2) PROHIBITION ON DUPLICATIVE PAY-
10 MENTS.—

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

14 (i) in paragraph (24)(B), by striking
15 the period and inserting “; or”; and

16 (ii) by inserting after paragraph (24)
17 the following new paragraph:

18 “(25) with respect to any amount ex-
19 pended under the State plan for an item, serv-
20 ice, or administrative cost for which payment is
21 or may be made directly to a person or entity
22 (including a State, local educational agency, or
23 the lead agency in the State with responsibility
24 for administering part C of the Individuals with
25 Disabilities Education Act) under the State

1 plan if payment for such item, service, or ad-
 2 ministrative cost was included in the determina-
 3 tion of a prepaid capitation or other risk-based
 4 rate of payment to an entity under a contract
 5 pursuant to section 1903(m).”.

6 (B) CONFORMING AMENDMENT.—The
 7 third sentence of section 1903(i) of such Act
 8 (42 U.S.C. 1396b(i)), as amended by subsection
 9 (a)(1)(C), is amended by striking “and (24)”
 10 and inserting “(24), and (25)”.

11 (c) ALLOWABLE SHARE OF FFP WITH RESPECT TO
 12 PAYMENT FOR SERVICES FURNISHED IN OR THROUGH AN
 13 EDUCATIONAL PROGRAM OR SETTING.—Section
 14 1903(w)(6) of the Social Security Act (42 U.S.C.
 15 1396b(w)(6)) is amended—

16 (1) in subparagraph (A), by inserting “subject
 17 to subparagraph (C),” after “subsection,”; and

18 (2) by adding at the end the following new sub-
 19 paragraph:

20 “(C) In the case of any Federal financial participa-
 21 tion paid under subsection (a) with respect to an expendi-
 22 ture for an item or service provided under the plan, or
 23 for any administrative cost incurred to carry out the plan,
 24 that is furnished in or through an educational program
 25 or setting, the State shall provide that—

1 “(i) if 0 percent of the expenditure was made
2 or the cost was incurred directly by the State, the
3 State shall pay the local educational agency in the
4 State or the lead agency in the State with responsi-
5 bility for administering part C of the Individuals
6 with Disabilities Education Act that made the ex-
7 penditure or incurred the cost (and, if applicable,
8 any consortium of public agencies that incurred
9 costs in connection with the collection or submission
10 of claims for such expenditures or costs), 100 per-
11 cent (divided, as appropriate, between such agencies
12 and such a consortium, if applicable) of the amount
13 of the Federal financial participation; and

14 “(ii) if 100 or any lesser percent of the expendi-
15 ture was made or the cost was directly incurred by
16 the State, the State shall retain only such percent-
17 age of the Federal financial participation paid for
18 the expenditure or cost as does not exceed the per-
19 centage of such expenditure or cost that was funded
20 by State revenues that are dedicated solely for the
21 provision of such medical assistance (and shall pay
22 out of any remaining percentage of such Federal fi-
23 nancial participation, the percentage due to the local
24 educational agency in the State or the lead agency
25 in the State with responsibility for administering

1 part C of the Individuals with Disabilities Education
2 Act that made or incurred the remaining percentage
3 of such expenditure or cost (and, if applicable, any
4 consortium of public agencies that incurred costs in
5 connection with the collection or submission of
6 claims for such expenditures or costs)).”.

7 (d) ASSURANCE OF REIMBURSEMENT FOR ADMINIS-
8 TRATIVE, ENROLLMENT, AND OUTREACH ACTIVITIES
9 CONDUCTED BY LOCAL EDUCATIONAL AGENCIES.—

10 (1) MEDICAID.—Section 1902 of the Social Se-
11 curity Act (42 U.S.C. 1396a) is amended by insert-
12 ing after subsection (j) the following new subsection:

13 “(k) Nothing in this title shall be construed as au-
14 thorizing the Secretary to prohibit the State agency with
15 responsibility for the administration or supervision of the
16 administration of the State plan from entering into inter-
17 agency agreements with local educational agencies under
18 which such local educational agencies shall be reimbursed
19 for the Federal share of amounts expended for administra-
20 tive, enrollment, and outreach activities for which payment
21 is made to the State under section 1903(a)(7), including
22 with respect to such activities as are conducted for pur-
23 poses of satisfying the requirements of subsection
24 (a)(43).”.

1 (2) SCHIP.—Section 2107(e)(1) of the Social
2 Security Act (42 U.S.C. 1397gg(e)(1)) is amended—

3 (A) by redesignating subparagraphs (B)
4 through (D) as subparagraphs (C) through (E),
5 respectively; and

6 (B) by inserting after subparagraph (A)
7 the following new subparagraph:

8 “(B) Section 1902(k) (relating to inter-
9 agency agreements with local educational agen-
10 cies for reimbursement for expenditures for ad-
11 ministrative, enrollment, and outreach activi-
12 ties).”.

13 (e) CLARIFICATION OF COVERAGE OF EPSDT AND
14 ITEMS AND SERVICES FURNISHED TO A DISABLED CHILD
15 PURSUANT TO SECTION 504 OF THE REHABILITATION
16 ACT OF 1973; DEFINITION OF “EDUCATIONAL PROGRAM
17 OR SETTING”.—Section 1903(c) of the Social Security Act
18 (42 U.S.C. 1396b(c)) is amended—

19 (1) by inserting “(1)” after “(c)”;

20 (2) by striking “Education Act or” and insert-
21 ing “Education Act,”;

22 (3) by inserting “, or furnished to a child with
23 a disability pursuant to section 504 of the Rehabili-
24 tation Act of 1973” before the period; and

1 (4) by adding at the end the following new
2 paragraphs:

3 “(2) Nothing in this title shall be construed as pro-
4 hibiting or restricting, or authorizing the Secretary to pro-
5 hibit or restrict, payment under subsection (a) for the fol-
6 lowing items or services furnished in or through an edu-
7 cational program or setting, or costs incurred with respect
8 to the furnishing of such items or services:

9 “(A) Medical assistance for items or services
10 described in section 1905(a)(4)(B) (relating to early
11 and periodic screening, diagnostic, and treatment
12 services defined in section 1905(r)) and costs in-
13 curred for providing such items or services in ac-
14 cordance with the requirements of section
15 1902(a)(43).

16 “(B) Costs incurred for providing services re-
17 lated to the administration of the State plan, includ-
18 ing providing information regarding the availability
19 of, and eligibility for, medical assistance under the
20 plan, and assistance with determinations of eligi-
21 bility and enrollment and redeterminations of eligi-
22 bility under the plan.

23 “(3) Nothing in this title shall be construed as pro-
24 hibiting or restricting, or authorizing the Secretary to pro-
25 hibit or restrict, payment under subsection (a) for medical

1 assistance furnished in or through an educational program
2 or setting or costs described in paragraph (2)(B) solely
3 because—

4 “(A) the State utilizes an all-inclusive payment
5 arrangement in making payments for medical assist-
6 ance described in subsections (a) or (r) of section
7 1905; or

8 “(B) the State utilizes a cost allocation system
9 that meets Federal requirements when paying for
10 the cost of services described in section 1902(a)(43)
11 or other administrative services directly related to
12 the administration of the State plan.

13 “(4)(A) For purposes of this title, the term ‘edu-
14 cational program or setting’ means any location in which
15 the items or services included in a child’s individualized
16 education plan established pursuant to part B of the Indi-
17 viduals with Disabilities Education Act or otherwise, or
18 in an infant’s or toddler’s individualized family service
19 plan established pursuant to part C of such Act, are deliv-
20 ered, including the home, child care setting, or school of
21 the child, infant, or toddler.

22 “(B) Such term includes—

23 “(i) any location in which an evaluation or as-
24 sessment is conducted, in accordance with the re-
25 quirements of section 1902(a)(43) and subsections

1 (a)(4)(B) and (r) of section 1905, to determine if a
2 child is a child with a disability under section 614
3 of the Individuals with Disabilities Education Act
4 (20 U.S.C. 1414) who requires an individualized
5 education program (IEP) under section 614(d) of
6 such Act (20 U.S.C. 1414(d)) or if an infant or tod-
7 dler is an infant or toddler with a disability under
8 section 635(a)(3) of such Act (20 U.S.C.
9 1435(a)(3)) who requires an individualized family
10 service plan under section 636 of such Act (20
11 U.S.C. 1436) and any location in which a reevalua-
12 tion or reassessment of such a determination is con-
13 ducted; and

14 “(ii) for purposes of subsection (m)(2)(C), any
15 location in which items or services described in sec-
16 tion 1905(a)(4)(B) (relating to early and periodic
17 screening, diagnostic, and treatment services defined
18 in section 1905(r)) are delivered and costs are in-
19 curred for providing such items or services in ac-
20 cordance with the requirements of section
21 1902(a)(43).”.

22 (f) ASSURANCE OF COMPLIANCE WITH FEDERAL
23 AND STATE REQUIREMENTS.—Section 1902(a) of the So-
24 cial Security Act (42 U.S.C. 1396a(a)) is amended—

1 (1) in paragraph (69), by striking “and” at the
2 end;

3 (2) in paragraph (70)(B)(iv), by striking the
4 period at the end and inserting “; and”; and

5 (3) by inserting after paragraph (70), the fol-
6 lowing new paragraph:

7 “(71) provide that—

8 “(A) the State will establish procedures to
9 ensure that—

10 “(i) any provider of an item or service
11 covered under the plan that is furnished in
12 or through an educational program or set-
13 ting complies with all Federal and State
14 requirements applicable to providers of
15 such items or services under the plan; and

16 “(ii) any educational entity that is en-
17 gaged in the provision of an activity de-
18 scribed in paragraph (43) or any other ac-
19 tivity that is directly related to the admin-
20 istration of the plan complies with all Fed-
21 eral and State requirements applicable for
22 payment for such activity; and

23 “(B) the State will not furnish medical as-
24 sistance for an item or service covered under
25 the plan in or through an educational program

1 or setting, or undertake any activity described
2 in paragraph (43) or any other activity that is
3 directly related to the administration of the
4 plan in or through such a program or setting,
5 unless the entity responsible for providing the
6 item or service, or undertaking such an activity,
7 in or through the educational program or set-
8 ting will be paid under the State plan for the
9 costs related to the furnishing of such item or
10 service or the undertaking of such activity.”.

11 (g) UNIFORM METHODOLOGY FOR EDUCATIONAL
12 PROGRAM OR SETTING-BASED CLAIMS.—

13 (1) IN GENERAL.—Not later than 90 days after
14 the date of enactment of this Act, the Secretary of
15 Health and Human Services and the Secretary of
16 Education, acting jointly and in consultation with
17 State medicaid directors, State educational agencies,
18 local educational agencies, and State agencies with
19 responsibility for administering part C of the Indi-
20 viduals with Disabilities Education Act, shall develop
21 and implement a uniform methodology for claims for
22 payment of medical assistance and related adminis-
23 trative costs furnished under title XIX of the Social
24 Security Act in an educational program or setting.

1 (2) REQUIREMENTS.—The methodology devel-
2 oped under paragraph (1)—

3 (A) shall not prohibit or restrict payment
4 for medical assistance and administrative activi-
5 ties that are provided or conducted in accord-
6 ance with section 1903(c) of the Social Security
7 Act (42 U.S.C. 1396b(c)); and

8 (B) with respect to administrative costs,
9 shall be based on—

10 (i) standards related to time studies
11 and population estimates; and

12 (ii) a national standard for deter-
13 mining payment for such costs.

14 (h) EFFECTIVE DATE.—The amendments made by
15 this section shall take effect on the date of enactment of
16 this Act and shall apply to items and services provided
17 and expenditures made on or after such date, without re-
18 gard to whether implementing regulations are in effect.

○