Great City Schools
Jeff Simering
393-2427

MEDICAID CUTS AND REVISIONS IN BUDGET RECONCILIATION BILL
Talking Points

- **Currently the Medicaid Program, an entitlement program which matches state expenditures with federal aid, provides many local school districts with reimbursements for health/medical related services rendered to disabled school children as required by other federal law (Individual with Disabilities Education Act, Sec. 504 of the Rehabilitation Act, Americans with Disabilities Act)**

- **Health/medical related services mandated by federal disability law to be provided by public school districts to disabled school children include:**
  - **nursing, allied health, or paraprofessional services such tracheostomy care, catheterization, gastronomic feeding, inhalation therapy, etc.**
  - **medical equipment such as hearing aids, wheel chairs, mechanized communicators, etc.**
  - **physical therapy or occupational therapy**
  - **diagnostic services, assessment & evaluation**
  - **audiology and speech pathology**
  - **medication administration and monitoring**

- **The restructuring of the Medicaid Program into a flexible state Block Grant will allow the states to deny funding reimbursements for these federally-mandated, health/medical related services rendered to disabled school children by their local school district**

- **Funding revisions under the new state Block Grant amounting to nearly $170 billion in reduced federal expenditures over seven years are projected to force states to constrict services provided to eligible individuals and the agencies which serve them. Since school districts and their disabled students were generally the "last in" the state Medicaid system, it is expected that school districts and these children will be the "first out" under the funding revisions of the new state Block Grant.**

- **Department figures indicate that children comprise half of the Medicaid recipients but use less than a quarter of Medicaid funding. Of the 18 million children covered by Medicaid, approximately 1 million are disabled children.**

- **It is estimated that disabled preschool, elementary and secondary school children receive approximately $ 1/2 to 1 billion in medically-related services from the Medicaid Program. These medically-related services required by federal law to be provided by schools districts are viewed as essential to providing disabled children with the ability to benefit from the instruction offered in their schools. In the largest urban school districts nearly $200 million in such direct medically-related services are reimbursed by Medicaid (e.g. $85 million in the New York City Public Schools, $40 million in the Chicago Public School, $15 million in the Houston Public Schools).**

- **Without Medicaid reimbursements for these health/medical related services provided disabled students, school districts would have to attempt to locally absorb these $ 1 billion in estimated costs, since these services, though not the funding are mandated by federal law.**

- **Since the Federal government requires by law that public school districts provide these non-educational services to disabled school children, it is not unreasonable to request that any revisions to the Medicaid Program include a requirement to reimburse school districts for medically-related services for disabled preschool, elementary and secondary school children required by the federal Individuals with Disabilities Education Act and Sec. 504 of the Rehabilitation Act.**

Estimated Cumulative Effect of Congressional Budget Cuts on Urban Schools (FY96)

Council of the Great City Schools

District	ED								DOL	DOA	D/HHS		
	Title I	Impact Aid	Vocational Education	Bilingual Education	Magnet Schools	Dropout Prevention	Prof. Dev. nd Innov. Ed.	rug Free and Safe Schools	Goals 2000	Summer Youth	School Lunch	Medicaid*	Medicare+	TOTAL
Atlanta	$3,429,835	$34,203	$198,770	$182,004	$0	$0	$340,181	$308,530	$513,003	$767,953	$2,514,201	$0	--	$8,288,681
Baltimore	$7,246,800	NA	$726,066	$71,235	$0	$571,000	$350,757	$599,655	NA	NA	$4,000,000	$2,700,000	--	$16,265,513
Birmingham	$1,775,269	$26,793	$139,297	$0	$0	$0	$192,098	$271,516	$371,356	$187,500	$1,654,644	$0	--	$4,618,473
Boston	$3,782,815	$22,802	$228,037	$479,612	$178,205	$0	$406,556	$361,134	$544,992	$0	$2,000,000	$0	--	$8,004,153
Broward County	$3,865,400	$19,952	$318,316	$512,872	$272,026	$486,000	$590,008	$692,363	$1,561,506	$790,321	$4,590,301	$0	--	$13,699,064
Buffalo	$3,856,143	$0	$148,805	$319,919	$0	$0	$225,646	$0	$421,710	$468,285	$1,840,000	$1,400,000	--	$8,680,508
Charlotte	$1,137,418	$0	$187,532	$0	$379,243	$0	$249,765	$276,809	$701,397	$0	$467,614	$100,000	--	$3,499,779
Chicago	$28,231,590	$77,983	$1,171,584	$389,064	$0	$351,957	$2,199,018	$2,276,017	$3,594,289	$1,306,475	$17,536,140	$40,000,000	--	$97,134,116
Cleveland	$6,097,353	$0	$597,401	$0	$0	$0	$465,384	$358,275	$615,946	$3,800,000	$3,568,606	$642,000	--	$16,144,965
Columbus	$3,381,871	$0	$441,371	$0	$0	$0	$336,085	$751,379	$558,702	$350,000	$1,962,262	$1,200,000	--	$8,981,671
Dade County	$11,073,304	$11,369	$678,567	$254,380	$0	$0	$2,041,889	$1,464,328	$2,638,748	$722,032	$10,620,000	$0	--	$29,504,616
Dallas	$6,334,874	$0	$249,577	$0	$0	$573,530	$1,061,151	$879,288	$1,247,341	$0	$1,385,934	$1,800,000	--	$13,531,694
Dayton	$1,999,216	$0	$166,518	$0	$256,264	$0	$157,119	$132,734	$234,678	$1,232,000	$1,304,289	$1,000,000	--	$6,482,819
Denver	$2,636,967	$80,617	$210,376	$51,961	$0	$0	$293,167	$291,343	$549,603	$864,324	$1,549,090	$0	--	$6,527,449
Detroit	$16,765,753	$0	$730,358	$160,278	$0	$490,620	$1,460,697	$1,028,834	$1,528,565	$1,848,049	$5,200,000	$4,000,000	--	$33,213,154
El Paso	$3,087,178	$285,027	$157,625	$71,235	$0	$0	$263,916	$353,701	$561,113	$489,364	$2,155,958	$200,000	--	$7,625,117
Fort Worth	$2,375,433	$44,350	$87,672	$0	$0	$0	$291,277	$417,984	$620,671	$566,955	$1,209,018	$1,151,623	--	$6,764,983
Fresno	$3,974,102	$0	$253,305	$75,500	$0	$0	$294,754	$372,063	NA	$1,788,462	$3,312,701	$487,541	--	$10,558,428
Houston	$8,733,101	$2,850	$408,501	$245,759	$0	$349,179	$701,844	$1,029,694	$1,730,932	$0	$6,000,000	$14,900,000	--	$34,101,860
Indianapolis	$2,553,229	$4,759	$180,386	$0	$0	$0	$216,435	$314,922	$406,541	$0	$1,593,000	$0	--	$5,269,272
Long Beach	$3,688,015	$74,670	$159,244	$87,990	$404,803	$435,324	$324,369	$323,448	$658,580	$744,129	$2,680,080	$0	--	$9,580,653
Los Angeles	$24,539,080	$0	$1,866,626	$2,524,707	$0	$614,558	$1,552,473	$2,545,171	$5,707,965	$15,554,424	$23,000,000	$300,000	--	$78,205,005
Memphis	$4,322,326	$0	$420,658	$0	$0	$0	$380,832	$474,871	$942,459	$314,877	$3,683,840	$0	--	$10,539,863
Milwaukee	$7,099,699	$11,401	$325,436	$2,137,039	$0	$174,934	$824,931	$597,521	$874,710	$13,300	$3,449,790	$0	--	$15,508,760
Minneapolis	$2,104,286	$6,600	$70,368	$260,031	$177,415	$0	$195,718	$225,007	$378,849	$0	$1,515,195	$0	--	$4,933,470
Nashville	$1,799,549	$15,476	$261,507	$0	$0	$0	$231,338	$270,759	$604,506	$334,642	$1,685,217	$0	--	$5,202,993
Newark	$4,588,427	$0	$131,732	$111,689	$0	$205,264	$328,152	$0	$418,383	$0	NA	NA	--	$5,783,647
New Orleans	$5,337,660	$0	$215,244	$0	$0	$505,420	$167,543	$449,527	$697,494	$400,000	$3,400,000	$781,431	--	$11,954,319
New York City	$66,989,742	$570,055	$2,416,488	$14,346,488	$2,123,158	$1,855,850	$6,233,267	$11,114,104	$8,685,102	$0	$39,000,000	$85,200,000	--	$238,534,254
Norfolk	$1,343,846	$421,841	$155,988	$0	$0	$0	$167,324	$206,236	$322,522	$1,290,562	$1,215,000	$1,082	--	$5,124,402
Oakland	$2,721,304	$0	$128,950	$128,222	$0	$0	$180,115	$239,745	$447,419	$200,048	NA	$215,000	--	$4,260,804
Oklahoma City	$1,580,235	$0	$3,311	$90,863	$0	$0	$136,905	$172,929	$329,831	$150,954	$200,000	$125,000	--	$2,790,029
Omaha	$1,293,244	$9,776	$95,477	$12,721	$0	$0	$168,576	$195,345	$376,893	$110,000	$1,034,879	$1,000,000	--	$4,296,911
Philadelphia	$14,124,845	$95,355	$1,030,937	$196,482	$387,016	$1,142,682	$1,349,319	$1,516,683	$1,806,812	$1,452,608	$6,227,640	$2,500,000	--	$31,830,380
Pittsburgh	$2,147,675	$21,404	$246,893	$69,323	$0	$0	$748,661	$285,763	$359,445	$1,185,791	$1,200,000	$300,000	--	$6,564,955
Portland	$1,841,520	$6,885	$102,497	$356,256	$0	$336,086	$213,194	$800,219	$497,267	$438,927	$1,195,320	$900,000	--	$6,688,171
Providence	$1,990,731	$0	$155,424	$0	$159,808	$452,027	$280,818	$223,199	$193,250	$52,299	NA	$1,000,000	--	$4,507,556
Rochester	$2,408,396	$8,173	$140,357	$293,090	$0	$972,342	$299,350	$185,900	$306,384	$128,271	$1,664,736	$1,800,000	--	$8,206,998
San Diego	$3,982,386	$692,922	$184,087	$121,811	$0	$0	$479,230	$461,179	$1,122,775	$770,589	$3,585,651	$1,000,000	--	$12,400,631
San Francisco	$2,022,946	$123,195	$91,002	$939,320	$381,558	$435,182	$280,906	$275,268	$567,514	$990,742	$1,573,200	$600,000	--	$8,280,833
Seattle	$1,387,539	$15,391	$139,611	$69,237	$193,986	$460,603	$267,499	$768,561	$384,910	$962,215	$1,038,446	$118,000	--	$5,806,000
St. Louis	$3,579,022	$5,130	$306,424	$0	$0	$175,444	$233,690	$311,911	$369,208	$70,000	$2,420,000	$1,800,000	--	$9,270,829
St. Paul	$1,977,117	$12,655	$182,130	$169,223	$145,689	$0	$53,316	$197,566	$334,346	$921,977	$1,313,275	NA	--	$5,307,295
Toledo	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	$626,614	--	$626,614
Washington	$3,307,347	$180,488	$229,404	NA	$108,390	NA	$666,970	$1,006,905	NA	NA	$3,200,000	$4,200,000	--	$12,899,504
TOTAL	$288,514,588	$2,882,126	$16,339,861	$24,728,309	$5,167,561	$10,588,001	$27,902,244	$35,028,389	$44,787,717	$41,268,075	$178,746,027	$172,048,291	$120,000,000	$968,001,189

NA: Not Available

* Does not include value of donated services

\+ Includes estimated costs to urban schools in California, Ohio, Illinois, Massachussetts, Louisiana, and Texas

11/28/95

from Houston Public Schools

SCHOOL AND HEALTH RELATED SERVICES (SHARS)

The Health Care Financing Administration (HCFA) in cooperation with an interagency initiative between the Texas Department of Health and the Texas Education Agency, offer the following procedures for reimbursement under the Texas Medical Assistance Program (Medicaid). These procedures must be stated in the student's IEP and can be offered in the office/school (POS 1), home (POS 2) and other locations, e.g., after school location (POS 9). In addition, these procedures must be administered by SHARS personnel who meet the certification or licensure requirements as listed accordingly.

Assessment

Activities related to the evaluation of the functioning of a student for the purpose of determining the needs for specific school health and related services, the effect of delivering services on IEP goals, and the revision of IEP plans and goals.

— Assessments may be provided by:

- A professional who holds a valid Texas Education Agency educational diagnostician certificate, or
- A psychologist, psychological associate, school psychologist, or an associate school psychologist

Procedure Code and Maximum Allowable Fee

POS	TOS	Proc. Code
1, 2, or 9	1	7015X Fed. Share Reimb.*

Audiology

Identification of children with hearing loss; determination of the range, nature and degree of hearing loss, including the referral for medical or other professional attention for the habilitation of hearing; provision of habilitation activities, such as language habilitation, auditory training, speech reading (lip reading), hearing evaluation and speech conservation; determination of the child's need for group and individual amplification.

— Audiological services shall be provided by a professional who holds a valid state license as an audiologist. State licensure requirements are equal to ASHA certification requirements.

Procedure Code and Maximum Allowable Fee

POS	TOS	Proc. Code
1, 2, or 9	1	7007X Fed. Share Reimb.*

Counseling

Services provided to assist the child and/or parents in understanding the nature of the disability, special needs of the child, and the child's development.

— Counseling services shall be provided in the areas of specialization by a professional who holds one of the following qualifications:

- A valid Texas Education Agency certificate, as a counselor, visiting teacher, school psychologist, or associate psychologist
- Certification by the Texas State Board of Examiners of Psychologists as a psychologist or psychological associate
- Licensure by the State Board of Examiners of Professional Counselors
- A master's degree in social work from a recognized institution of higher education, or
- Licensure as a certified social worker

Procedure Code and Maximum Allowable Fee

POS	TOS	Proc. Code
1, 2, or 9	1	7008X Fed. Share Reimb.*

Speech-Language Pathologist Therapy*

Identification of children with speech and/or language disorders; diagnosis and appraisal of specific speech and/or language disorders; referral for medical or other professional attention necessary for the habilitation of speech or language disorders; provision of speech or language services for the habilitation or prevention of communicative disorders.

— Speech-Language services shall be reimbursed so long as they are consistent with 42 CFR 440.110.

Speech Therapy services provided by an ASHA* certified/ASHA equivalent qualified speech-language pathologist are eligible for reimbursement. (*ASHA: American Speech-Language Hearing Association) Speech-language services as defined in the School Health and Related Services (SHARS) program provided under the direction (supervision) of a speech pathologist who has a Certificate of Clinical Competence from the American Speech-Language Hearing Association (ASHA) or equivalent qualifications are eligible for Medicaid reimbursement subject to the following provisions:

- The supervising speech pathologist provides sufficient supervision to ensure appropriate completion of the responsibilities assigned
- There is documentation of direct involvement of the supervising speech pathologist in overseeing the services provided
- The speech pathologist providing the direction must ensure that the personnel carrying out the directives meet the minimum qualifications set forth in the rules of the State Board of Examiners for Speech-Language Pathology and Audiology relating to Licensed Assistant in Speech-Language Pathology

Services provided by a speech-language pathologist who is not certified by the American Speech-Language Hearing Association (ASHA) who meets the applicable set of minimum equivalent education requirements and work experience as set forth below can also supervise non-ASHA certified therapists.

For speech-language pathologists employed by an approved SHARS provider before January 1, 1993, and who continued to be consecutively employed by an approved SHARS provider:

- Master's degree in speech-language pathology or communication disorders
- 300 clock hours of practicum
- Completed one year of post graduate experience supervised by a Texas licensed master's degreed speech-language pathologist or communication disorders
- Passing score of 600 or above on NESPA

For speech-language pathologists employed or reemployed by an approved SHARS provider on or after January 1, 1993:

- Master's degree in speech and language pathology
- 25 clock hours of supervised observation followed by 350 clock hours of supervised practicum
- Completed one year of post-graduate experience supervised by a Texas licensed master's degreed speech and language pathologist
- Passing score of 600 or above on NESPA

For individual speech language pathologists who enrolled in the SHARS program before January 1, 1993, ASHA equivalency requirements before January 1, 1993, would apply.

Procedure Code and Maximum Allowable Fee

POS	IOS	Proc. Code
1, 2, or 9	1	7012X Fed. Share Reimb.*

Medical Services

Diagnostic services to determine a child's medically related disabling condition that results in the child's need for school health and related services.

— Medical diagnostic services shall be provided by a licensed physician.

Procedure Code and Maximum Allowable Fee

POS	TOS	Proc. Code
1, 2, or 9	1	7013X Fed. Share Reimb.*

School Health Services

Services such as catheterization, tube feeding, suctioning, etc., by a school nurse or other similarly qualified person; screening and referral for health needs; monitoring medication needed by students during school hours; consultations with physicians, parents and staff regarding the effects of medication.

— School health services shall be provided or supervised by a licensed physician or by a registered nurse (RN) with or without a bachelor's degree.

Procedure Code and Maximum Allowable Fee

POS	TOS	Proc. Code
1, 2, or 9	1	7014X Fed. Share Reimb.*

Occupational Therapy*

Improving, developing or restoring functions impaired or lost through illness, injury or deprivation; improving ability to perform tasks for independent functioning when functions are impaired or lost; preventing, through early intervention, initial or further impairment or loss of function.

— Occupational therapy shall be provided by a professional who is licensed by the Texas Board of Occupational Therapy Examiners. A certified occupational therapy assistant (COTA) may provide occupational therapy services under the supervision of an occupational therapist in accordance with the standards of the profession.

Procedure Code and Maximum Allowable Fee

POS	TOS	Proc. Code
1, 2, or 9	1	7009X Fed. Share Reimb.*

Physical Therapy*

Services provided for the purpose of preventing or alleviating movement dysfunction and related functional problems; obtaining, interpreting, and integrating information appropriate to program planning.

— Physical therapy shall be provided by a professional who is licensed by the Texas Board of Physical Therapy Examiners. A physical therapist assistant (LPTA) may provide physical therapy services under the supervision of a licensed physical therapist (LPT) in accordance with the standards of the profession.

Procedure Code and Maximum Allowable Fee

POS	TOS	Proc. Code
1, 2, or 9	1	7010X Fed. Share Reimb.*

Psychological Services

Administering psychological tests and other assessment procedures; interpreting assessment results; obtaining, integrating and interpreting information about child behavior and conditions related to learning; planning and managing a program of psychological services.

— Psychological services shall be provided by a professional who holds a certificate from the Texas State Board of Examiners of Psychologists as a psychologist or psychological associate or a Texas Education Agency certificate as a school psychologist or an associate school psychologist.

FOR DATES OF SERVICE FEBRUARY 1, 1994 AND AFTER:

Effective for claims with dates of service February 1, 1994 and after, prior authorization requests to exceed the $312.50 annual limit are no longer required. Additionally, the reduction of the maximum allowable fee is no longer reduced to 62.5%. For any claims submitted with dates of service prior to February 1, 1994, a prior authorization number (PAN) is still required.

Reimbursement for psychological services for dates of service February 1, 1994 and after are listed below.

Procedure Code and Maximum Allowable Fee

POS	TOS	Proc. Code
1, 2, or 9	1	7011X Fed. Share Reimb.*

FOR DATES OF SERVICE PRIOR TO FEBRUARY 1, 1994:

In the state of Texas there is a limitation on outpatient psychological services that reduces the maximum allowable fee to 62.5%. In addition, reimbursement is limited to $312.50 per calendar year unless prior authorization is obtained. To avoid claim denial for this limitation, NHIC requires school districts to obtain prior authorization for the following psychological services.

In addition to this limitation, the federal share percentage (64.18%) will be applied.

Procedure Code and Maximum Allowable Fee

POS	TOS	Proc. Code
1, 2, or 9	1	7011X 62.5% Limitation Fed. Share Reimb.*

Special Transportation

— Special Transportation service may be Medicaid reimbursable if:

- it is being provided to and from a Medicaid covered service(s) for the day the claim is made;
- the Medicaid covered service(s) is included in the student's Individual Educational Plan (IEP); and
- the special transportation service is also included in the student's IEP.

At this time, special transportation services include coverage of transportation in the following instances:

- Transportation from the student's place of residence to school (where the student receives one or more of the health-related services covered by Medicaid, provided by school), and return to residence.
- Transportation from the student's place of residence to a medical provider's office who has a contract with the school to provide one or more of the health related services covered by Medicaid, and return to residence.
- Transportation from the school to a medical provider's office who has a contract with the school to provide one or more of the health related services covered by Medicaid, and return to school.

Special transportation services from a child's residence to school and return will not be Medicaid reimbursable if, on the day the child is transported, the child does not receive a Medicaid covered SHARS other than transportation) at the school location.

Procedure Code and Maximum Allowable Fee

POS	TOS	Proc. Code
1, 2, or 9	1	4738Z Fed. Share Reimb.*

- Federal share reimbursement is currently calculated at 63.31% of the maximum fee and is adjusted October 1 of each year.
- This procedure requires the name and complete address or the provider number of the ordering physician if billing claims on paper. The Medicare six digit core number of the ordering physician is required if billing electronically.

NOTE: All SHARS procedures listed require a valid ICD-9-CM diagnosis code.

MEMORANDUM November 29, 1995

TO: Charlene Cross

FROM: Ella Oliphant

SUBJECT: NURSING PROCEDURES IN HISD

The following nursing procedures are currently performed by school nurses in the Houston Independent School District:

- Colostomy care
- Tracheostomy care
  - Care and cleaning of stoma and tube
- Tracheostomy suctioning
- Nasal and Oral suctioning
- Clean intermittent catheterization
- Monitoring self-catheterizations
- Gastrostomy Feeding
- Nebulizer inhalation therapy with aerosol compressor
- Ostomy care
- Medication administration
- Mechanical ventilation
- Oxygen use

Ella Oliphant EO

/vj

cc: Dr. Mattye Glass

DISCUSSION DRAFT

ESSENTIAL ELEMENTS FOR SERVICES TO DISABLED PRESCHOOL AND SCHOOL CHILDREN IN ANY REVISION OF THE MEDICAID PROGRAM

AN ENTITLEMENT STATUS FOR THE DISABLED OR A TRUE MANDATORY SERVICES PROVISION FOR DISABLED INDIVIDUALS IS ESSENTIAL ALONG WITH A CLEAR DELINEATION WHICH EXPRESSLY INCLUDES THE FOLLOWING:

SEPARATE SUBSECTION

"(__) FOR THE PURPOSES OF COVERAGE AND SERVICES, INDIVIDUALS WITH DISABILITIES UNDER THIS ACT SHALL NOTWITHSTANDING ANY OTHER PROVISION OF LAW INCLUDE:

1. PRESCHOOL, ELEMENTARY AND SECONDARY SCHOOL CHILDREN WITH DISABILITIES; AND
2. AT LEAST THE HEALTH RELATED SERVICES REQUIRED TO BE PROVIDED TO SUCH CHILDREN BY STATE AND LOCAL EDUCATIONAL AGENCIES

PURSUANT TO (CITATION OF PUBLIC LAW NUMBERS FOR IDEA, SEC. 504 OF REHAB ACT AND ADA))."

Note: The Reconciliation (HR 2491) bill's crossreference to sec. 2116, State flexibility, and to the State eligibility discretion in sec. 2111(a)(1) effectively negates any mandatory services or quasi-entitlement for the specified populations in sec. 2111(b), including the disabled.

DRAFT

Antidiscrimination in Benefits Provision

"No preschool, elementary or secondary school child with a disability shall be discriminated against or denied financial benefits by a State for any authorized services under this Act notwithstanding that such health related services are federally-mandated under the Individuals with Disabilities Education Act or section 504 of the Rehabilitation Act and provided through a state agency or local educational agency.

MEMORANDUM -- 1/12/96

TO: Jennifer Kline

PROM: Jeff Simering
Council of the Great City Schools

RE: Disabled School Children and Medicaid Revisions

Thanks for your continued concern about maintaining Medicaid supported services for disabled preschool and school children. I know that it is typical for national associations to claim that the "sky is falling" whenever revisions in federal programs are proposed. However, in this instance I have attached an "$85 million piece of the sky" in the form of a letter from the New York state Medicaid agency to the New York City Public Schools placing them on notice that the exercise of the thirty day termination clause in their Medicaid agreement is under consideration as a result of the pending federal Block Grant legislation. While most of my participating city school systems are likewise fearful of being dropped or substantially restricted within a revised state Medicaid system, it is unusual to be provided with the proverbial "smoking gun" documentation from any state entity.

As mentioned in the meeting last month at the Education Department, any form of ceiling on federal Medicaid matching funds to the states coupled with some level of increased state flexibility is anticipated to result in disabled school children receiving significantly reduced Medicaid supported services. We need only look back to the Republican governors taking dead aim at the Chafee disability provisions in the Senate Committee bill to envision their implementation actions. However, unlikely other classes of Medicaid recipients, separate federal law (IDEA program requirements and Rehab Act civil rights law) will shift mandatorily the financial burden for these health services to school districts.

The current Medicaid system is just beginning to reach more disabled school children, but many are still unserved such as in California. Politically, if access to these Medicaid supported services for disabled school children is removed in a block grant approach, the responsibility will likely lie with the Republican Congress which promoted that approach. Similarly, if this access is removed by states under a per capita cap approach, it is easy to project where the responsibility will be placed. Therefore, my organization would suggest from both the practical and political perspectives that some service protection/guarantee which includes an operational crossreference to disabled preschool and school children under IDEA and sec. 504 be a part of any Democrat/White House offer.

A few of us have taken some general drafting stabs (see attached) at some alternative approaches to the above:

1. a person with disability definitional clarification provision, or "including" add-on;
2. an antidiscrimination in services provision;
3. a redrafting of the "toothless" current law "can't prohibit/can't require" provision into some functional protection

Since I am again snowed-in or snowed-out depending on one's perspective, I can be reached through voice mail at the office at 202-393-2427 or at home at 301-596-5059. We have collected a few state's school-based medicaid services descriptions which you might find useful.

A

DISCUSSION DRAFT

ESSENTIAL ELEMENTS FOR SERVICES TO DISABLED PRESCHOOL AND SCHOOL CHILDREN IN ANY REVISION OF THE MEDICAID PROGRAM

AN ENTITLEMENT STATUS FOR THE DISABLED OR A TRUE MANDATORY SERVICES PROVISION FOR DISABLED INDIVIDUALS IS ESSENTIAL ALONG WITH A CLEAR DELINEATION WHICH EXPRESSLY INCLUDES THE FOLLOWING:

SEPARATE SUBSECTION

"(__) FOR THE PURPOSES OF COVERAGE AND SERVICES, INDIVIDUALS WITH DISABILITIES UNDER THIS ACT SHALL NOTWITHSTANDING ANY OTHER PROVISION OF LAW INCLUDE:

1. PRESCHOOL, ELEMENTARY AND SECONDARY SCHOOL CHILDREN WITH DISABILITIES; AND
2. AT LEAST THE HEALTH RELATED SERVICES REQUIRED TO BE PROVIDED TO SUCH CHILDREN BY STATE AND LOCAL EDUCATIONAL AGENCIES

PURSUANT TO (CITATION OF PUBLIC LAW NUMBERS FOR IDEA, SEC. 504 OF REHAB ACT AND ADA))."

Note: The Reconciliation (HR 2491) bill's crossreference to sec. 2116, State flexibility, and to the State eligibility discretion in sec. 2111(a)(1) effectively negates any mandatory services or quasi-entitlement for the specified populations in sec. 2111(b), including the disabled.

B

DISCUSSION DRAFT

ESSENTIAL ELEMENTS FOR SERVICES TO DISABLED PRESCHOOL AND SCHOOL CHILDREN IN ANY REVISION OF THE MEDICAID PROGRAM

AN ENTITLEMENT STATUS FOR THE DISABLED OR A TRUE MANDATORY SERVICES PROVISION FOR DISABLED INDIVIDUALS IS ESSENTIAL ALONG WITH A CLEAR DEFINITION OF "DISABLED INDIVIDUALS" WHICH EXPRESSLY INCLUDES THE FOLLOWING:

" ... INCLUDING PRESCHOOL, ELEMENTARY AND SECONDARY SCHOOL CHILDREN WITH DISABILITIES TO THE EXTENT OF THE HEALTH RELATED SERVICES REQUIRED TO BE PROVIDED TO SUCH CHILDREN BY STATE AND LOCAL EDUCATIONAL AGENCIES PURSUANT TO (CITATION OF PUBLIC LAW NUMBERS FOR IDEA, SEC. 504 OF REHAB ACT AND ADA))."

Note: The Reconciliation (HR 2491) bill's crossreference to sec. 2116, State flexibility, and to the State eligibility discretion in sec. 2111(a)(1) effectively negates any mandatory services or quasi-entitlement for the specified populations in sec. 2111(b), including the disabled.

C

A STATE MAY NOT DISCRIMINATE AGAINST OR DENY ?ALLOWABLE? SERVICES UNDER THIS ACT TO ANY PRESCHOOL, ELEMENTARY OR SECONDARY SCHOOL CHILD WITH DISABILITIES WHO IS OTHERWISE ELIGIBLE UNDER SEC.. (INCOME ELIGIBILITY PROVISION AND ANY WAIVER PROVISION) TO THE EXTENT THAT SUCH SERVICES ARE REQUIRED TO BE PROVIDED BY FEDERAL LAW (IDEA, SEC. 504, ADA), AND MAY NOT PROHIBIT A GRANTEE OR SUBGRANTEE UNDER SUCH LAWS FROM RECEIVING REIMBURSEMENTS FOR SUCH SERVICES PROVIDED TO SUCH CHILDREN UNDER THIS ACT.

42USA1396b(c)

NOTHING IN THIS SUBCHAPTER SHALL BE CONSTRUED AS PROHIBITING OR RESTRICTING, OR AUTHORIZING THE SECRETARY TO PROHIBIT OR RESTRICT, PAYMENT UNDER SUBSECTION (a) OF THIS SECTION FOR MEDICAL ASSISTANCE FOR COVERED SERVICES FURNISHED TO A CHILD WITH A DISABILITY BECAUSE SUCH SERVICES ARE INCLUDED IN THE CHILD'S INDIVIDUALIZED EDUCATION PROGRAM ESTABLISHED PURSUANT TO PART B OF THE IDEA OR FURNISHED TO AN INFANT OR TODDLER WITH DISABILITY BECAUSE SUCH SERVICES ARE INCLUDED IN THE CHILD'S INDIVIDUALIZED FAMILY SERVICES PLAN ADAPTED PURSUANT TO PART H OF SUCH ACT.

REDRAFT OF CURRENT LAW APPROACH

THE STATE SHALL NOT PROHIBIT OR RESTRICT PAYMENT FOR ANY SERVICES AUTHORIZED UNDER ??SUBSECTION (a) OF THIS SECTION?? -(THE OLD REFERENCE) WHICH ARE REQUIRED TO BE PROVIDED BY FEDERAL LAW BY A GRANTEE OR SUBGRANTEE TO A CHILD WITH A DISABILITY, AS A RESULT OF SUCH SERVICES BEING INCLUDED IN THE CHILD'S INDIVIDUALIZED EDUCATION PROGRAM ESTABLISHED PURSUANT TO PART B OF THE IDEA OR FURNISHED TO AN INFANT OR TODDLER WITH DISABILITY BECAUSE SUCH SERVICES ARE INCLUDED IN THE CHILD'S INDIVIDUALIZED FAMILY SERVICES PLAN ADAPTED PURSUANT TO PART H OF SUCH ACT, OR REQUIRED TO BE PROVIDED UNDER SEC. 504 OF THE REHABILITATION ACT, AS LONG AS SUCH CHILD MEETS THE ELIGIBILITY REQUIREMENTS UNDER SEC. ??? (INCOME ELIG. AND WAIVER REFERENCE) OF THIS ACT.

DEPARTMENT OF SOCIAL SERVICES

40 NORTH PEARL STREET, ALBANY, NEW YORK 12243-0001

Brian J. Wing
Acting Commissioner

#115

received

July 20, 1995

David T. Fitzgerald
Acting Deputy Administrator
Fiscal Oversight and Review
Office of Financial Management
Human Resources Administration
151-155 West Broadway
New York, New York 10013

Carl Schneider
Board of Education of the
City of New York
Office of the Chancellor
110 Livingston Street
Brooklyn, New York 11201

RE: Cooperative Agreement
EPSDT Administration

Dear Mr. Fitzgerald and Mr. Schneider:

The purpose of this letter is to transmit for your consideration a proposed agreement for EPSDT administration for one year beginning July 1, 1995, and ending June 30, 1996, between the New York State Department of Social Services (DSS or the Department), the New York City Human Resources Administration (HRA) and the New York City Board of Education (BOE). I have enclosed six copies of the proposed agreement. If the terms and conditions are acceptable please have four copies executed by the HRA and the BOE. Four executed counterparts should be returned to me for execution by the Department. I will provide each of you with a fully executed copy of the agreement after signing by the Department. The two additional copies are for your respective files pending your receipt of the fully executed agreement.

The term of the renewal agreement is limited to one year in anticipation of the possibility of the federal government changing the manner in which it provides Medicaid funding to the states from entitlement to block grant in 1996. The conditions of a block grant of Medicaid during the term of the agreement may compel the State to terminate the agreement by invoking the 30 days notice of termination clause in Paragraph 10 of the agreement.

For your information the agreement is identical to the previous agreement. However, in the event of changes in federal methodology in the future, the Department anticipates that future agreements will be changed to include language that will reflect current reality and thereby provide protection to all parties with regard to any financial obligations.

Please forward the agreements to the appropriate New York City officials for signature. If you have any questions please contact the undersigned at (518) 474-9665.

Very truly yours,

[redacted]
Assistant Counsel
Bureau of Deferrals
and Disallowances.

BVL/

5 Enclosures to Fitzgerald
1 Enclosure to Schneider