

109TH CONGRESS
1ST SESSION

H. R. 4624

To amend title XIX of the Social Security Act to require States to provide oral health services to children and aged, blind, or disabled individuals under the Medicaid Program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 17, 2005

Mr. BOUSTANY (for himself and Mr. ANDREWS) introduced the following bill;
which was referred to the Committee on Energy and Commerce

A BILL

To amend title XIX of the Social Security Act to require States to provide oral health services to children and aged, blind, or disabled individuals under the Medicaid Program, 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 “Special Care Dentistry
5 Act of 2005”.

1 **SEC. 2. REQUIREMENT TO PROVIDE CHILDREN AND AGED,**
2 **BLIND, OR DISABLED INDIVIDUALS WITH**
3 **ORAL HEALTH SERVICES UNDER THE MED-**
4 **ICAID PROGRAM.**

5 (a) IN GENERAL.—Title XIX of the Social Security
6 Act (42 U.S.C. 1396 et seq.) is amended—

7 (1) by redesignating section 1936 as section
8 1937; and

9 (2) by inserting after section 1935, the fol-
10 lowing:

11 “ORAL HEALTH SERVICES FOR CHILDREN AND AGED,
12 BLIND, OR DISABLED INDIVIDUALS

13 “SEC. 1936. (a) EXPANSION OF EPSDT.—

14 “(1) IN GENERAL.—A State plan under this
15 title shall provide, subject to the succeeding provi-
16 sions of this section and through a plan amendment,
17 for the provision of oral health services for children
18 who are eligible for medical assistance under the
19 State program under this title and aged, blind, or
20 disabled individuals described in subsection (b) as
21 part of the early and periodic screening, diagnostic,
22 and treatment services described in section 1905(r)
23 (in this section referred to as ‘EPSDT services’)
24 that are provided under the State plan.

25 “(2) APPLICATION OF EPSDT REQUIRE-
26 MENTS.—The requirements applicable under this

1 title and the State plan with respect to the provision
2 of EPSDT services that are oral health services, in-
3 cluding payment structures, access requirements,
4 participation goals, and standards of care, shall
5 apply to the provision of oral health services for
6 aged, blind, or disabled individuals described in sub-
7 section (b) in the same manner as such requirements
8 apply to the provision of such services to children.

9 “(3) SPECIAL CARE WAIVER TO PROVIDE SERV-
10 ICES UNDER A SEPARATE STATE ADULT DENTAL
11 PROGRAM.—The Secretary may permit a State to
12 provide oral health services for aged, blind, or dis-
13 abled individuals described in subsection (b) through
14 a separate State adult dental program if the State
15 demonstrates that the services and fees provided and
16 program requirements under the waiver are at least
17 equivalent to the services, fees, and requirements
18 that are provided to children under this title and in-
19 clude age-appropriate services for such individuals.

20 “(4) MEDICAL NECESSITY.—EPSDT services
21 that are oral health services (other than purely cos-
22 metic dental or oral health procedures, as defined by
23 the Secretary) provided to children who are eligible
24 for medical assistance under the State program
25 under this title or to aged, blind, or disabled individ-

1 uals described in subsection (b) are deemed to be
2 medically necessary. A State or any organization
3 with an agreement with the State to provide oral
4 health services to such children or individuals, may
5 not require a physician’s authorization (by signature
6 or otherwise) before oral health services may be pro-
7 vided to such children or individuals or reimburse-
8 ment for the provision of such services to such chil-
9 dren or individuals may be made.

10 “(5) PROHIBITION ON FUNDING LIMITATION.—
11 Notwithstanding any other provision of law, no Fed-
12 eral or State agency shall establish any policy that
13 is designed to limit the federal dollars expended for
14 EPSDT services that are oral health services for
15 children who are eligible for medical assistance
16 under the State program under this title or for aged,
17 blind, or disabled individuals described in subsection
18 (b).

19 “(b) AGED, BLIND, OR DISABLED INDIVIDUALS DE-
20 SCRIBED.—For purposes of subsection (a), an aged, blind,
21 or disabled individual described in this subsection is an
22 individual—

23 “(1) who is eligible for medical assistance under
24 subclause (I) or (II) of section 1902(a)(10)(A)(i)
25 (but only, in the case of subclause (I), with respect

1 to an individual who is so eligible on the basis of re-
2 ceiving aid or assistance under any plan of the State
3 approved under title I, X, XIV, or XVI); or

4 “(2) who would be considered an aged, blind, or
5 disabled individual under section 1614 (without re-
6 gard to whether the individual satisfies the income
7 and resource requirements for receiving supple-
8 mental security income benefits under title XVI) and
9 is otherwise eligible for medical assistance under the
10 State plan or under a waiver of such plan.

11 “(c) APPLICABLE FMAP.—With respect to oral
12 health services furnished in a State for calendar quarters
13 in a calendar year to children eligible for medical assist-
14 ance under the State program under this title or to aged,
15 blind, or disabled individuals described in subsection (b),
16 the Federal medical assistance percentage shall be equal
17 to 90 percent.

18 “(d) REQUIREMENTS FOR PAYMENTS.—

19 “(1) NO COST-SHARING OR CAPS ON SERV-
20 ICES.—Notwithstanding any other provision of this
21 title, no cost-sharing and no annual maximum
22 amount of payment for, or level of, services shall be
23 imposed with respect to the provision of—

24 “(A) EPSDT services that are oral health
25 services provided to children who are eligible for

1 medical assistance under the State program
2 under this title; and

3 “(B) oral health services to aged, blind, or
4 disabled individuals described in subsection (b).

5 “(2) PAYMENT RATES AND COVERED PROCE-
6 DURES.—

7 “(A) MINIMUM PERIOD OF APPLICA-
8 BILITY.—With respect to each 12-month period
9 that begins on the date a State establishes or
10 increases the payment rates or types of proce-
11 dures to which such rates apply with respect to
12 oral health services for children who are eligible
13 for medical assistance under the State program
14 under this title or aged, blind, or disabled indi-
15 viduals described in subsection (b), the State
16 may not decrease such rates or types of proce-
17 dures before the end of the succeeding 12-
18 month period.

19 “(B) NOTICE OF REDUCTION REQUIRED.—
20 Notwithstanding subparagraph (A), a State
21 may not decrease the payment rates or the
22 types of procedures to which such rates apply
23 with respect to oral health services for children
24 who are eligible for medical assistance under
25 the State program under this title or aged,

1 blind, or disabled individuals described in sub-
2 section (b) without providing notice of the pro-
3 posed decrease to providers of such services and
4 provider organizations in the State during the
5 preceding 12-month period.

6 “(C) CRITERIA.—In establishing payment
7 rates and the types of procedures to which such
8 rates apply with respect to oral health services
9 for children who are eligible for medical assist-
10 ance under the State program under this title
11 or aged, blind, or disabled individuals described
12 in subsection (b), a State shall include appro-
13 priate and necessary procedures for such chil-
14 dren and individuals, and shall establish pay-
15 ment rates that promote access to such services
16 at a level equal to that of the general popu-
17 lation.

18 “(D) USE OF ORAL HEALTH MINIMUM
19 DATA SET.—In establishing payment rates for
20 nursing facilities and skilled nursing facilities
21 under title XVIII, the State shall rely on guid-
22 ance from the Secretary to include the oral
23 health section of the Minimum Data Set (com-
24 monly referred to as ‘MDS’) to establish pay-
25 ment rates for such facilities.

1 “(3) PROVIDER CODE SELECTION.—A provider
2 of oral health services for children who are eligible
3 for medical assistance under the State program
4 under this title or aged, blind, or disabled individ-
5 uals described in subsection (b) shall be allowed to
6 bill for the provision of such services, regardless of
7 whether the services are to be paid under this title
8 or title XVIII, using codes established or recognized
9 by the American Dental Association.

10 “(e) POST-ELIGIBILITY TREATMENT OF INCOME
11 (PETI) PROVISIONS.—

12 “(1) ALLOWANCE OF MULTIPLE MONTH DE-
13 DUCTIONS.—A State shall allow a resident of a
14 nursing facility or of a skilled nursing facility under
15 title XVIII who is an aged, blind, or disabled indi-
16 vidual described in subsection (b) and who receives
17 oral health services multiple month deductions with
18 respect to the provision of such services on a par-
19 ticular date. Except for a resident’s personal month-
20 ly allowance, fees reimbursed through post-eligibility
21 treatment of income procedures under the State pro-
22 gram under this title shall be paid using the full
23 amount of such a resident’s applied income each
24 month (shared proportionally between providers if
25 multiple bills exist) until the outstanding balance of

1 any bill for such services is paid in full or otherwise
2 eliminated.

3 “(2) NOTICE OF AMOUNT OF AVAILABLE IN-
4 COME.—Upon receipt of a signed release from a
5 resident of a nursing facility or skilled nursing facil-
6 ity under title XVIII who is an aged, blind, or dis-
7 abled individual described in subsection (b) who has
8 requested oral health services, or such resident’s rep-
9 resentative, the State shall furnish a provider of oral
10 health services with the amount of applied income
11 available for that resident not later than 5 days
12 after receipt of the release.

13 “(3) COMPLIANCE WITH APPLIED INCOME
14 LAWS.—Each State shall comply with Federal re-
15 quirements relating to applied income adjustments
16 for residents of nursing facilities and skilled nursing
17 facilities under title XVIII and shall provide the Sec-
18 retary with procedural information documenting how
19 fee reimbursements are made through applied in-
20 come adjustments for such residents who reside in
21 such facilities in the State.

22 “(4) NOTIFICATION OF FEE REIMBURSEMENT
23 MECHANISM.—The State annually shall notify nurs-
24 ing facilities, skilled nursing facilities under title
25 XVIII, providers of oral health services, and other

1 appropriate agencies or organizations of the ability
2 to provide fee reimbursements for oral health serv-
3 ices through applied income adjustments for facility
4 residents and of the procedural requirements related
5 to such reimbursements.

6 “(5) NOTICE OF AVAILABILITY OF SERVICES.—
7 The State shall notify residents of nursing facilities
8 or skilled nursing facilities under title XVIII (or rep-
9 resentatives of such residents) of—

10 “(A) the availability of oral health services;

11 and

12 “(B) in the case of each such resident who
13 is an aged, blind, or disabled individual de-
14 scribed in subsection (b), the amount of applied
15 income available each month to such resident to
16 purchase such services concurrent with the first
17 determination of the applied income of such
18 resident.

19 “(6) DIRECT PAYMENT TO PROVIDERS.—If the
20 State has a signed assignment of benefits from a
21 resident of a nursing facility or a skilled nursing fa-
22 cility under title XVIII who is an aged, blind, or dis-
23 abled individual described in subsection (b) or a
24 legal representative of such a resident, the State
25 shall pay a provider of oral health services directly

1 for such services from the resident's applied income
2 adjustments not later than 25 days after the date on
3 which the State received the assignment.

4 “(7) ASSURANCE OF TREATMENT OF IN-
5 COME.—If the State pays a nursing facility or a
6 skilled nursing facility under title XVIII on a pro-
7 spective basis for oral health services, the State shall
8 assure—

9 “(A) that Pre-Eligibility Treatment of In-
10 come matches all rules and regulations that
11 apply to Post-Eligibility Treatment of Income;
12 and

13 “(B) access through applied income.

14 “(8) PROHIBITION ON LIMITATIONS ON FEES
15 FOR CERTAIN SERVICES.—A State may not set a fee
16 limit or a fee schedule for oral health services pur-
17 chased by residents of a nursing facility or a skilled
18 nursing facility under title XVIII who is an aged,
19 blind, or disabled individual described in subsection
20 (b) or a legal representative of such a resident
21 through applied income provisions.

22 “(9) PROVIDER REIMBURSEMENT SELEC-
23 TION.—

24 “(A) IN GENERAL.—A State shall permit a
25 provider of oral health services to children who

1 are eligible for medical assistance under the
2 State program under this title or aged, blind, or
3 disabled individuals described in subsection (b)
4 to choose on a patient-by-patient basis and on
5 a provider-by-provider basis, when to seek reim-
6 bursement for the provision of such services
7 under this title or title XVIII, a program oper-
8 ated under a waiver described in subsection
9 (a)(3), or through post-eligibility treatment of
10 income procedures in accordance with the provi-
11 sions of paragraph (1).

12 “(B) REQUIREMENTS.—A State shall en-
13 sure that the procedures established for pro-
14 vider reimbursement selection in accordance
15 with this paragraph—

16 “(i) comply with the requirements of
17 subsection (a)(4) (prohibiting any prior au-
18 thorization requirement for the provision
19 of, or reimbursement for, oral health serv-
20 ices); and

21 “(ii) do not permit a provider to ob-
22 tain reimbursement for the same procedure
23 under more than 1 of the reimbursement
24 options described in subparagraph (A).

1 “(f) TRANSPORTATION.—The State shall provide
2 transportation for children eligible for medical assistance
3 under the State program under this title and aged, blind,
4 or disabled individuals described in subsection (b) to den-
5 tal offices, hospitals, clinics, or other treatment centers for
6 the provision of oral health services to the same extent
7 that transportation is provided under the State plan for
8 other medical assistance.”.

9 (b) DEFINITION OF ORAL HEALTH SERVICES.—

10 (1) IN GENERAL.—Section 1905 of the Social
11 Security Act (42 U.S.C. 1396d) is amended—

12 (A) in subsection (a), by striking para-
13 graph (10) and inserting the following:

14 “(10) oral health services (as defined in sub-
15 section (y));”; and

16 (B) by adding at the end the following:

17 “(y) For purposes of this title, the term ‘oral health
18 services’ means—

19 “(1) relief of pain and infections;

20 “(2) restoration or replacement of teeth;

21 “(3) periodontal treatment;

22 “(4) adult fluoride application;

23 “(5) in-patient and out-patient dental surgical,
24 evaluation, and examination services;

25 “(6) denture or partial denture care;

1 “(7) per patient house call and nursing facility
2 or skilled nursing facility visits; and

3 “(8) such other dental health preventative serv-
4 ices as the Secretary determines, in consultation
5 with national professional dental groups, are nec-
6 essary for treating and preventing oral health dis-
7 eases and maintenance of oral health.”.

8 (2) CONFORMING AMENDMENTS.—

9 (A) Section 1902(a)(43)(D)(iii) of the So-
10 cial Security Act (42 U.S.C.
11 1396a(a)(43)(D)(iii)) is amended by striking
12 “dental” and inserting “oral health”.

13 (B) Section 1919(b)(4)(A)(vi) of such Act
14 (42 U.S.C. 1396r(b)(4)(A)(vi)) is amended by
15 striking “dental” each place it appears and in-
16 serting “oral health”.

17 (C) Section 1927(k)(3)(C) of such Act (42
18 U.S.C. 1396r–8(k)(3)(C)) is amended by strik-
19 ing “Dental” and inserting “Oral health”.

20 (c) CONFORMING AMENDMENTS.—

21 (1) DEFINITION OF EPSDT.—Section
22 1905(r)(3) of the Social Security Act (42 U.S.C.
23 1396d(r)(3)) is amended—

1 (A) in the matter preceding subparagraph
2 (A), by striking “dental” and inserting “oral
3 health”;

4 (B) in subparagraph (A)(ii), by striking
5 “and” at the end;

6 (C) in subparagraph (B), by striking the
7 period and inserting “; and”; and

8 (D) by adding at the end the following:

9 “(C) which, in the case of an aged, blind,
10 or disabled individual described in section
11 1936(b), include oral health services (as defined
12 in subsection (y) which are provided—

13 “(i) at intervals which meet reason-
14 able standards of dental practice (taking
15 into account the increased needs and oral
16 health complexities of this vulnerable popu-
17 lation), as determined by the Secretary
18 after consultation with national profes-
19 sional dental groups; and

20 “(ii) at such other intervals to deter-
21 mine the existence of, or to treat, a sus-
22 pected illness or condition.”.

23 (2) STATE PLAN.—Section 1902(a) of such Act
24 (42 U.S.C. 1396a(a)) is amended—

1 (A) in paragraph (66), by striking “and”
2 at the end:

3 (B) in paragraph (67), by striking the pe-
4 riod and inserting “; and”; and

5 (C) by inserting after paragraph (67), the
6 following:

7 “(68) provide for—

8 “(A) making oral health services available
9 to aged, blind, or disabled individuals described
10 in subsection (b) of section 1936 in accordance
11 with the requirements of that section;

12 “(B) informing all persons in the State
13 who are aged, blind, or disabled and have been
14 determined to be eligible for medical assistance
15 including oral health services described in sec-
16 tion 1905(y), of the availability of such services;

17 “(C) providing or arranging for the provi-
18 sion of such services in all cases where they are
19 requested;

20 “(D) arranging for (directly or through re-
21 ferral to appropriate agencies, organizations, or
22 individuals) corrective treatment the need for
23 which is disclosed by such services, and

24 “(E) reporting to the Secretary (in a uni-
25 form form and manner established by the Sec-

1 retary, by aged, blind, or disabled group and by
2 basis of eligibility for medical assistance, and by
3 not later than April 1 after the end of each fis-
4 cal year, beginning with fiscal year 2006) the
5 information relating to oral health services pro-
6 vided under the plan during each fiscal year
7 consisting of—

8 “(i) the number of aged, blind, or dis-
9 abled individuals who reside in the State;

10 “(ii) the number of aged, blind, or
11 disabled individuals provided oral health
12 services;

13 “(iii) the number of such individuals
14 referred for corrective treatment (the need
15 for which is disclosed by such services);

16 “(iv) the amount of, and type of, pre-
17 ventive services needed and provided;

18 “(v) the amount of, and type of, sur-
19 gical restorative services needed and pro-
20 vided;

21 “(vi) the amount of, and type of,
22 other services needed and provided,
23 disaggregated into whether the services
24 were—

25 “(I) emergency;

1 “(II) preventive;
 2 “(III) surgical;
 3 “(IV) restorative;
 4 “(V) periodontal;
 5 “(VI) endodontic; or
 6 “(VII) prosthodontic; and
 7 “(vii) the State’s results in attaining
 8 the participation goals set for the State
 9 under section 1905(r) with respect to the
 10 provision of such services.”.

11 (3) FEDERAL MEDICAL ASSISTANCE PERCENT-
 12 AGE.—Section 1905(b) of such Act (42 U.S.C.
 13 1396d(b)) is amended in the first sentence, by strik-
 14 ing “section 1933(d)” and inserting “sections
 15 1933(d) and 1936(c)”.

16 (4) NURSING FACILITIES.—Section
 17 1919(b)(4)(A)(vi) of such Act (42 U.S.C.
 18 1396r(b)(4)(A)(vi)) is amended by inserting “, oral
 19 health services (as defined in section 1905(y)) for an
 20 aged, blind, or disabled individual described in sec-
 21 tion 1936(b) who is a resident of the nursing facil-
 22 ity,” after “plan”).

23 (d) EFFECTIVE DATE.—

24 (1) IN GENERAL.—Except as provided in para-
 25 graph (2), the amendments made by this section

1 shall apply to calendar quarters beginning on or
2 after October 1, 2006, without regard to whether or
3 not final regulations to carry out such amendments
4 have been promulgated by such date.

5 (2) DELAY PERMITTED FOR STATE PLAN
6 AMENDMENT.—In the case of a State plan for med-
7 ical assistance under title XIX of the Social Security
8 Act which the Secretary of Health and Human Serv-
9 ices determines requires State legislation (other than
10 legislation appropriating funds) in order for the plan
11 to meet the additional requirements imposed by the
12 amendments made by this section, the State plan
13 shall not be regarded as failing to comply with the
14 requirements of such title solely on the basis of its
15 failure to meet these additional requirements before
16 the first day of the first calendar quarter beginning
17 after the close of the first regular session of the
18 State legislature that begins after the date of enact-
19 ment of this Act. For purposes of the previous sen-
20 tence, in the case of a State that has a 2-year legis-
21 lative session, each year of such session shall be
22 deemed to be a separate regular session of the State
23 legislature.

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