

108TH CONGRESS  
2D SESSION

# H. R. \_\_\_\_\_

---

## IN THE HOUSE OF REPRESENTATIVES

Mr. ANDREWS introduced the following bill; which was referred to the  
Committee on \_\_\_\_\_

---

### 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 2004”.



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.

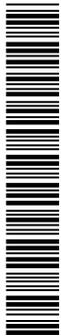
19 “(B) NOTICE OF REDUCTION REQUIRED.—  
20 Notwithstanding subparagraph (A), a State  
21 may not decrease the payment rates or the  
22 types of procedures to which such rates apply  
23 with respect to oral health services for children  
24 who are eligible for medical assistance under  
25 the State 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 medical codes, terminology, and  
9 fees for examination, prevention, and treatment to  
10 the extent that the provider determines that the use  
11 of such codes, terminology, and fees are appropriate  
12 with respect to the services provided.

13           “(e) POST-ELIGIBILITY TREATMENT OF INCOME  
14 (PETI) PROVISIONS.—

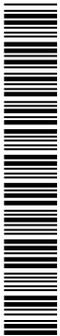
15           “(1) ALLOWANCE OF MULTIPLE MONTH DE-  
16 Ductions.—A State shall allow a resident of a  
17 nursing facility or of a skilled nursing facility under  
18 title XVIII who is an aged, blind, or disabled indi-  
19 vidual described in subsection (b) and who receives  
20 oral health services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



1 amount of such a resident's applied income each  
2 month (shared proportionally between providers if  
3 multiple bills exist) until the outstanding balance of  
4 any bill for such services is paid in full or otherwise  
5 eliminated.

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

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



1           “(4) NOTIFICATION OF FEE REIMBURSEMENT  
2 MECHANISM.—The State annually shall notify nurs-  
3 ing facilities, skilled nursing facilities under title  
4 XVIII, providers of oral health services, and other  
5 appropriate agencies or organizations of the ability  
6 to provide fee reimbursements for oral health serv-  
7 ices through applied income adjustments for facility  
8 residents and of the procedural requirements related  
9 to such reimbursements.

10           “(5) NOTICE OF AVAILABILITY OF SERVICES.—  
11 The State shall notify residents of nursing facilities  
12 or skilled nursing facilities under title XVIII (or rep-  
13 resentatives of such residents) of—

14           “(A) the availability of oral health services;  
15 and

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

23           “(6) DIRECT PAYMENT TO PROVIDERS.—If the  
24 State has a signed assignment of benefits from a  
25 resident of a nursing facility or a skilled nursing fa-



1 cility under title XVIII who is an aged, blind, or dis-  
2 abled individual described in subsection (b) or a  
3 legal representative of such a resident, the State  
4 shall pay a provider of oral health services directly  
5 for such services from the resident's applied income  
6 adjustments not later than 25 days after the date on  
7 which the State received the assignment.

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

13 “(A) that Pre-Eligibility Treatment of In-  
14 come matches all rules and regulations that  
15 apply to Post-Eligibility Treatment of Income;  
16 and

17 “(B) access through applied income.

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



1           “(9) PROVIDER REIMBURSEMENT SELEC-  
2           TION.—

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

16                   “(B) REQUIREMENTS.—A State shall en-  
17          sure that the procedures established for pro-  
18          vider reimbursement selection in accordance  
19          with this paragraph—

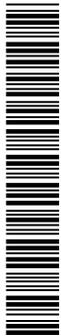
20                           “(i) comply with the requirements of  
21                           subsection (a)(4) (prohibiting any prior au-  
22                           thorization requirement for the provision  
23                           of, or reimbursement for, oral health serv-  
24                           ices); and



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

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

13                  “(g) PENALTY FOR BARRIERS TO ACCESS.—With re-  
14                  spect to each instance in which the Secretary determines  
15                  that a State, through the imposition of burdensome paper-  
16                  work, procedures, or otherwise, has imposed barriers for  
17                  access to oral health services for children eligible for med-  
18                  ical assistance under the State program under this title  
19                  or aged, blind, or disabled individuals described in sub-  
20                  section (b), the Secretary may impose a civil money pen-  
21                  alty in an amount not to exceed \$10,000 per day until  
22                  the barrier is removed. The provisions of section 1128A  
23                  (other than subsections (a) and (b)) shall apply to a civil  
24                  money penalty under the previous sentence in the same



1 manner as such provisions apply to a penalty or pro-  
2 ceeding under section 1128A(a).”.

3 (b) DEFINITION OF ORAL HEALTH SERVICES.—

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

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

8 “(10) oral health services (as defined in sub-  
9 section (x));”; and

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

11 “(x) For purposes of this title, the term ‘oral health  
12 services’ means—

13 “(1) relief of pain and infections;

14 “(2) restoration or replacement of teeth;

15 “(3) periodontal treatment;

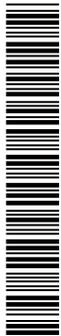
16 “(4) adult fluoride application;

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

19 “(6) denture or partial denture care;

20 “(7) per patient house call and nursing facility  
21 or skilled nursing facility visits; and

22 “(8) such other dental health preventative serv-  
23 ices as the Secretary determines are necessary for  
24 treating and preventing oral health diseases and  
25 maintenance of oral health.”.



1 (2) CONFORMING AMENDMENTS.—

2 (A) Section 1902(a)(43)(D)(iii) of the So-  
3 cial Security Act (42 U.S.C.  
4 1396a(a)(43)(D)(iii)) is amended by striking  
5 “dental” and inserting “oral health”.

6 (B) Section 1919(b)(4)(A)(vi) of such Act  
7 (42 U.S.C. 1396r(b)(4)(A)(vi)) is amended by  
8 striking “dental” each place it appears and in-  
9 serting “oral health”.

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

13 (c) CONFORMING AMENDMENTS.—

14 (1) DEFINITION OF EPSDT.—Section  
15 1905(r)(3) of the Social Security Act (42 U.S.C.  
16 1396d(r)(3)) is amended—

17 (A) in the matter preceding subparagraph  
18 (A), by striking “dental” and inserting “oral  
19 health”;

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

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

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



1           “(C) which, in the case of an aged, blind,  
2 or disabled individual described in section  
3 1936(b), include oral health services (as defined  
4 in subsection (x) which are provided—

5           “(i) at intervals which meet reason-  
6 able standards of dental practice (taking  
7 into account the increased needs and oral  
8 health complexities of this vulnerable popu-  
9 lation), as determined by the Secretary  
10 after consultation with recognized dental  
11 organizations; and

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

15           (2) STATE PLAN.—Section 1902(a) of the So-  
16 cial Security Act (42 U.S.C. 1396a(a)) is  
17 amended—

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

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

22           (C) by inserting after paragraph (67), the  
23 following:

24           “(68) provide for—



1           “(A) making oral health services available  
2 to aged, blind, or disabled individuals described  
3 in subsection (b) of section 1936 in accordance  
4 with the requirements of that section;

5           “(B) informing all persons in the State  
6 who are aged, blind, or disabled and have been  
7 determined to be eligible for medical assistance  
8 including oral health services described in sec-  
9 tion 1905(x), of the availability of such services;

10           “(C) providing or arranging for the provi-  
11 sion of such services in all cases where they are  
12 requested;

13           “(D) arranging for (directly or through re-  
14 ferral to appropriate agencies, organizations, or  
15 individuals) corrective treatment the need for  
16 which is disclosed by such services, and

17           “(E) reporting to the Secretary (in a uni-  
18 form form and manner established by the Sec-  
19 retary, by aged, blind, or disabled group and by  
20 basis of eligibility for medical assistance, and by  
21 not later than April 1 after the end of each fis-  
22 cal year, beginning with fiscal year 2005) the  
23 information relating to oral health services pro-  
24 vided under the plan during each fiscal year  
25 consisting of—



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

3 “(ii) the number of aged, blind, or  
4 disabled individuals provided oral health  
5 services;

6 “(iii) the number of such individuals  
7 referred for corrective treatment (the need  
8 for which is disclosed by such services);

9 “(iv) the amount of, and type of, serv-  
10 ices needed and provided, disaggregated  
11 into whether the services were—

12 “(I) emergency preventive;

13 “(II) surgical restorative;

14 “(III) periodontal;

15 “(IV) endodontic; or

16 “(V) prosthodontic; and

17 “(v) the State’s results in attaining  
18 the participation goals set for the State  
19 under section 1905(r) with respect to the  
20 provision of such services.”.

21 (3) FEDERAL MEDICAL ASSISTANCE PERCENT-  
22 AGE.—Section 1905(b) of the Social Security Act  
23 (42 U.S.C. 1396d(b)) is amended in the first sen-  
24 tence, by striking “section 1933(d)” and inserting  
25 “sections 1933(d) and 1936(c)”.



1           (4)       NURSING       FACILITIES.—Section  
2       1919(b)(4)(A)(vi) of the Social Security Act (42  
3       U.S.C. 1396r(b)(4)(A)(vi)) is amended by inserting  
4       “, oral health services (as defined in section  
5       1905(x)) for an aged, blind, or disabled individual  
6       described in section 1936(b) who is a resident of the  
7       nursing facility,” after “plan”).

8       (d) INCLUSION IN CRITERIA FOR ASSESSING NURS-  
9       ING FACILITIES UNDER MEDICARE AND MEDICAID.—

10           (1) MEDICARE.—Section 1819(f)(5) of the So-  
11       cial Security Act (42 U.S.C. 1395i-3(f)(5)) is  
12       amended—

13           (A) in subparagraph (F), by striking  
14       “and” at the end;

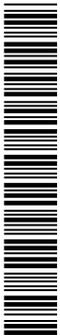
15           (B) in subparagraph (G), by striking the  
16       period and inserting “, and”; and

17           (C) by adding at the end the following:

18           “(H) direction of oral health services by a  
19       dentist.”.

20           (2) MEDICAID.—Section 1919(f)(5) of the So-  
21       cial Security Act (42 U.S.C. 1396r(f)(5)) is  
22       amended—

23           (A) in subparagraph (F), by striking  
24       “and” at the end;



1 (B) in subparagraph (G), by striking the  
2 period and inserting “, and”; and

3 (C) by adding at the end the following:

4 “(H) direction of oral health services by a  
5 dentist.”.

6 (e) EFFECTIVE DATE.—

7 (1) IN GENERAL.—Except as provided in para-  
8 graph (2), the amendments made by this section  
9 shall apply to calendar quarters beginning on or  
10 after October 1, 2005, without regard to whether or  
11 not final regulations to carry out such amendments  
12 have been promulgated by such date.

13 (2) DELAY PERMITTED FOR STATE PLAN  
14 AMENDMENT.—In the case of a State plan for med-  
15 ical assistance under title XIX of the Social Security  
16 Act which the Secretary of Health and Human Serv-  
17 ices determines requires State legislation (other than  
18 legislation appropriating funds) in order for the plan  
19 to meet the additional requirements imposed by the  
20 amendments made by this section, the State plan  
21 shall not be regarded as failing to comply with the  
22 requirements of such title solely on the basis of its  
23 failure to meet these additional requirements before  
24 the first day of the first calendar quarter beginning  
25 after the close of the first regular session of the



1 State legislature that begins after the date of enact-  
2 ment of this Act. For purposes of the previous sen-  
3 tence, in the case of a State that has a 2-year legis-  
4 lative session, each year of such session shall be  
5 deemed to be a separate regular session of the State  
6 legislature.

