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Representative DeVitis

Cosponsors: Representatives Ginter, Grossman, Rezabek, Boose, McColley, Brenner, Romanchuk, Sprague, Hagan, Duffey, Gonzales, Butler, Cera, Patterson, Sykes, Bishoff, Anielski, Antonio, Barnes, Boccieri, Boggs, Boyce, Burkley, Craig, Fedor, Howse, Johnson, G., Kuhns, Lepore-Hagan, O'Brien, M., O'Brien, S., Perales, Reece, Rogers, Ruhl, Slesnick, Smith, K., Strahorn, Terhar

A BILL

To amend sections 5162.01, 5162.36, 5162.361, 1
5162.362, 5261.363, 5162.364, 5162.365, 5162.54, 2
and 5162.64; to amend, for the purpose of 3
adopting new section numbers as indicated in 4
parentheses, sections 5162.361 (5162.362), 5
5162.362 (5162.364), 5162.363 (5162.361), 6
5162.364 (5162.3610), and 5162.365 (5162.367); 7
and to enact new sections 5162.363 and 5162.365 8
and sections 5162.366, 5162.368, and 5162.369 of 9
the Revised Code regarding the Medicaid School 10
Program. 11

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 5162.01, 5162.36, 5162.361, 12
5162.362, 5162.363, 5162.364, 5162.365, 5162.54, and 5162.64 be 13
amended; sections 5162.361 (5162.362), 5162.362 (5162.364), 14
5162.363 (5162.361), 5162.364 (5162.3610), and 5162.365 15
(5162.367) be amended for the purpose of adopting new section 16

numbers as shown in parentheses; and new sections 5162.363 and 17
5162.365 and sections 5162.366, 5162.368, and 5162.369 of the 18
Revised Code be enacted to read as follows: 19

Sec. 5162.01. (A) As used in the Revised Code: 20

(1) "Medicaid" and "medicaid program" mean the program of 21
medical assistance established by Title XIX of the "Social 22
Security Act," 42 U.S.C. 1396 et seq., including any medical 23
assistance provided under the medicaid state plan or a federal 24
medicaid waiver granted by the United States secretary of health 25
and human services. 26

(2) "Medicare" and "medicare program" mean the federal 27
health insurance program established by Title XVIII of the 28
"Social Security Act," 42 U.S.C. 1395 et seq. 29

(B) As used in this chapter: 30

(1) "Dual eligible individual" has the same meaning as in 31
section 5160.01 of the Revised Code. 32

(2) "Exchange" has the same meaning as in 45 C.F.R. 33
155.20. 34

(3) "Federal financial participation" has the same meaning 35
as in section 5160.01 of the Revised Code. 36

(4) "Federal poverty line" means the official poverty line 37
defined by the United States office of management and budget 38
based on the most recent data available from the United States 39
bureau of the census and revised by the United States secretary 40
of health and human services pursuant to the "Omnibus Budget 41
Reconciliation Act of 1981," section 673(2), 42 U.S.C. 9902(2). 42

(5) "Healthy start component" means the component of the 43
medicaid program that covers pregnant women and children and is 44

identified in rules adopted under section 5162.02 of the Revised Code as the healthy start component. 45
46

(6) "Home and community-based services" means services provided under a home and community-based services medicaid waiver component. 47
48
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(7) "Home and community-based services medicaid waiver component" has the same meaning as in section 5166.01 of the Revised Code. 50
51
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(8) "ICF/IID" has the same meaning as in section 5124.01 of the Revised Code. 53
54

(9) "Individualized education program" has the same meaning as in section 3323.011 of the Revised Code. 55
56

(10) "Medicaid managed care organization" has the same meaning as in section 5167.01 of the Revised Code. 57
58

~~(10)~~ (11) "Medicaid provider" has the same meaning as in section 5164.01 of the Revised Code. 59
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~~(11)~~ (12) "Medicaid services" has the same meaning as in section 5164.01 of the Revised Code. 61
62

~~(12)~~ (13) "Medicaid waiver component" has the same meaning as in section 5166.01 of the Revised Code; 63
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~~(13)~~ (14) "Personal care services" has the same meaning as in 42 C.F.R. 440.167. 65
66

(15) "Nursing facility" and "nursing facility services" have the same meanings as in section 5165.01 of the Revised Code. 67
68
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~~(14)~~ (16) "Political subdivision" means a municipal corporation, township, county, school district, or other body 70
71

corporate and politic responsible for governmental activities 72
only in a geographical area smaller than that of the state. 73

~~(15)~~(17) "Prescribed drug" has the same meaning as in 74
section 5164.01 of the Revised Code. 75

~~(16)~~(18) "Provider agreement" has the same meaning as in 76
section 5164.01 of the Revised Code. 77

~~(17)~~(19) "Qualified medicaid school provider" means the 78
board of education of a city, local, or exempted village school 79
district, the governing authority of a community school 80
established under Chapter 3314. of the Revised Code, the state 81
school for the deaf, and the state school for the blind to which 82
both of the following apply: 83

(a) It holds a valid provider agreement. 84

(b) It meets all other conditions for participation in the 85
medicaid school component of the medicaid program established in 86
rules authorized by section ~~5162.364~~5162.3610 of the Revised 87
Code. 88

~~(18)~~(20) "State agency" means every organized body, 89
office, or agency, other than the department of medicaid, 90
established by the laws of the state for the exercise of any 91
function of state government. 92

~~(19)~~(21) "Vendor offset" means a reduction of a medicaid 93
payment to a medicaid provider to correct a previous, incorrect 94
medicaid payment to that provider. 95

Sec. 5162.36. The medicaid director shall create, in 96
accordance with sections 5162.36 to ~~5162.365~~5162.3610 of the 97
Revised Code, the medicaid school component of the medicaid 98
program. 99

Sec. ~~5162.363~~ 5162.361. The department of medicaid shall 100
enter into an interagency agreement with the department of 101
education under section 5162.35 of the Revised Code that 102
provides for the department of education to administer the 103
medicaid school component of the medicaid program other than the 104
aspects of the component that sections 5162.36 to ~~5162.365~~ 105
5162.3610 of the Revised Code require the department of medicaid 106
to administer. The interagency agreement may include a provision 107
that provides for the department of education to pay to the 108
department of medicaid the nonfederal share of a portion of the 109
administrative expenses the department of medicaid incurs in 110
administering the aspects of the medicaid school component that 111
the department of medicaid administers. The interagency 112
agreement shall include a provision requiring that the 113
department of education receive at least two and one-half per 114
cent of the federal financial participation the state receives 115
for the medicaid school component. 116

To the extent authorized by rules authorized by section 117
5162.021 of the Revised Code, the department of education shall 118
adopt rules establishing a process by which qualified medicaid 119
school providers participating in the medicaid school component 120
pay to the department of education the nonfederal share of the 121
department's expenses incurred in administering the component. 122
The rules shall be adopted in accordance with Chapter 119. of 123
the Revised Code. 124

Sec. ~~5162.361~~ 5162.362. A qualified medicaid school 125
provider participating in the medicaid school component of the 126
medicaid program may submit a claim to the department of 127
medicaid for federal financial participation for providing, ~~in~~ 128
~~schools,~~ services covered by the medicaid school component to 129
medicaid recipients who are eligible for the services. No 130

qualified medicaid school provider may submit such a claim 131
before the provider incurs the cost of providing the service. 132

The claim shall include certification of the qualified 133
medicaid school provider's expenditures for the service. The 134
certification shall show that the money the qualified medicaid 135
school provider used for the expenditures was nonfederal money 136
the provider may legally use for providing the service and that 137
the amount of the expenditures was sufficient to pay the full 138
cost of the service. 139

Except as otherwise provided in sections 5162.36 to 140
~~5162.365~~5162.3610 of the Revised Code, a qualified medicaid 141
school provider is subject to all conditions of participation in 142
the medicaid program that generally apply to providers of goods 143
and services under the medicaid program, including conditions 144
regarding claims, audits, and recovery of overpayments. 145

Sec. 5162.363. A qualified medicaid school provider's 146
claim for federal financial participation for providing a 147
service covered by the medicaid school component of the medicaid 148
program shall be rejected if either of the following applies: 149

(A) Unless the service is an initial assessment or 150
evaluation performed in the development of a medicaid 151
recipient's individualized education program, the service is not 152
included in the individualized education program developed for 153
the recipient to whom the service is provided. 154

(B) Another reason for rejection specified in rules 155
authorized by section 5162.3610 of the Revised Code applies to 156
the claim. 157

~~Sec. 5162.362~~ 5162.364. The department of medicaid shall 158
seek federal financial participation for each claim a qualified 159

medicaid school provider properly submits to the department 160
under section ~~5162.361~~5162.362 of the Revised Code. The 161
department shall disburse the federal financial participation 162
the department receives from the federal government for such a 163
claim to the qualified medicaid school provider that submitted 164
the claim. The department may make interim payments of the 165
federal financial participation before the reconciliation 166
required by division (E) of section 5162.365 of the Revised 167
Code. The department may not pay the qualified medicaid school 168
provider the nonfederal share of the cost of the services for 169
which the claim was submitted. 170

Sec. 5162.365. (A) Not later than the last day of each 171
fiscal year, each qualified medicaid school provider shall 172
submit to the department of education a report that includes, 173
for the most recent previous October, all of the following: 174

(1) The total number of the provider's students for whom 175
an individualized education program was developed; 176

(2) Of the number of the provider's students reported 177
under division (A) (1) of this section, the total number who were 178
medicaid recipients; 179

(3) The total number of the provider's students who were 180
medicaid recipients; 181

(4) The total number of the provider's students. 182

(B) Not later than the last day of each calendar year, the 183
department of education shall do all of the following: 184

(1) Review each qualified medicaid school provider's 185
report submitted that year under division (A) of this section 186
and make any corrections needed to ensure a report's accuracy; 187

(2) Using the information reported on a provider's report, 188
including any corrections the department makes to it, determine 189
the provider's individualized education program rate and 190
medicaid eligible rate; 191

(3) Notify each provider of the provider's individualized 192
education program rate and medicaid eligible rate; 193

(4) Make available to each provider the template created 194
pursuant to section 5162.366 of the Revised Code to be used in 195
completing the cost report required by division (D) of this 196
section. 197

(C) Not later than the last day of each calendar year, 198
each qualified medicaid school provider shall submit to the 199
department of medicaid all claims data the department needs for 200
the claims the provider submitted under section 5162.362 of the 201
Revised Code for the fiscal year that ended during that calendar 202
year. 203

(D) Not later than eighteen months after the end of each 204
fiscal year, each qualified medicaid school provider shall 205
submit to the department of medicaid a cost report documenting 206
the provider's actual costs incurred in providing, during that 207
fiscal year, services covered by the medicaid school component 208
of the medicaid program to medicaid recipients who are eligible 209
for the services. A certified public accountant must conduct an 210
agreed-upon procedures review of the cost report before the 211
provider may submit the cost report to the department. 212

(E) The department of medicaid shall reconcile interim 213
payments of federal financial participation made to a qualified 214
medicaid school provider for a fiscal year under section 215
5162.364 of the Revised Code with the provider's cost report for 216

that fiscal year submitted under division (D) of this section. 217
The department shall complete the reconciliation in time for the 218
following to occur not later than two years after the last day 219
of the fiscal year: 220

(1) If the provider is owed money under the 221
reconciliation, the department paying the provider the amount 222
owed to the provider. 223

(2) If the provider owes money under the reconciliation, 224
the provider paying the department the amount owed to the 225
department. 226

Sec. 5162.366. The department of education shall issue a 227
request for proposals for an entity, pursuant to a contract with 228
the department, to create a computer software program that 229
provides a template for qualified medicaid school providers to 230
use when submitting cost reports required by division (D) of 231
section 5162.365 of the Revised Code. 232

The department of medicaid and department of education 233
jointly shall prepare and annually update procedural guidelines 234
for, and other informational materials about, the medicaid 235
school component of the medicaid program that give qualified 236
medicaid school providers clear instructions for participation 237
in the component. 238

Sec. ~~5162.365~~ 5162.367. (A) A qualified medicaid school 239
provider is solely responsible for timely repaying any 240
overpayment that the provider receives under the medicaid school 241
component of the medicaid program and that is discovered by a 242
federal or state audit. This is the case regardless of whether 243
the audit's finding identifies the provider, department of 244
medicaid, or department of education as being responsible for 245

the overpayment. 246

(B) The department of medicaid shall not do any of the 247
following regarding an overpayment for which a qualified 248
medicaid school provider is responsible for repaying: 249

(1) Make a payment to the federal government to meet or 250
delay the provider's repayment obligation; 251

(2) Assume the provider's repayment obligation; 252

(3) Forgive the provider's repayment obligation. 253

(C) Each qualified medicaid school provider shall 254
indemnify and hold harmless the department of medicaid for any 255
cost or penalty resulting from a federal or state audit finding 256
that a claim submitted by the provider under section ~~5162.361-~~ 257
5162.362 of the Revised Code did not comply with a federal or 258
state requirement applicable to the claim, including a 259
requirement of a medicaid waiver component. 260

Sec. 5162.368. The medicaid school component of the 261
medicaid program shall cover nursing services provided by any of 262
the following: 263

(A) A registered nurse; 264

(B) A licensed practical nurse; 265

(C) A school health aide or any other individual who is 266
not licensed, certified, or otherwise authorized by a board or 267
other agency of the state to provide a health care service, but 268
only if all of the following apply: 269

(1) The individual is at least eighteen years of age. 270

(2) A registered nurse or licensed practical nurse has 271
delegated the nursing services to the individual in accordance 272

<u>with rules adopted under section 4723.07 of the Revised Code.</u>	273
<u>(3) The individual and the registered nurse or licensed</u>	274
<u>practical nurse who delegated the nursing services to the</u>	275
<u>individual are employed by or under contract with the qualified</u>	276
<u>medicaid school provider that submits the claim to the</u>	277
<u>department of medicaid for federal financial participation for</u>	278
<u>providing the nursing services.</u>	279
<u>Sec. 5162.369.</u> (A) <u>Subject to divisions (B) and (C) of</u>	280
<u>this section, the medicaid school component of the medicaid</u>	281
<u>program shall cover personal care services.</u>	282
<u>(B) A medicaid recipient who is eligible for the medicaid</u>	283
<u>school component may receive personal care services covered by</u>	284
<u>the component if both of the following apply:</u>	285
<u>(1) The recipient needs the services because the recipient</u>	286
<u>either cannot perform one or more activities of daily living or</u>	287
<u>instrumental activities of daily living or has a limitation in</u>	288
<u>performing one or more of those activities due to a functional,</u>	289
<u>cognitive, or behavioral impairment.</u>	290
<u>(2) The personal care services help the recipient benefit</u>	291
<u>from special education and related services provided pursuant to</u>	292
<u>Chapter 3323. of the Revised Code.</u>	293
<u>(C) Personal care services covered by the medicaid school</u>	294
<u>component may be provided by an individual who meets all of the</u>	295
<u>following requirements:</u>	296
<u>(1) The individual must be at least eighteen years of age.</u>	297
<u>(2) The individual must be trained to provide the personal</u>	298
<u>care services to the medicaid recipient who receives the</u>	299
<u>services.</u>	300

(3) The individual must provide the personal care services 301
under the direct supervision of a health care professional to 302
whom both of the following apply: 303

(a) The health care professional is licensed, certified, 304
or otherwise authorized by a board or other agency of the state 305
to provide a health care service. 306

(b) The health care professional is employed by or under 307
contract with the qualified medicaid school provider that 308
submits the claim to the department of medicaid for federal 309
financial participation for providing the personal care 310
services. 311

Sec. ~~5162.364~~ 5162.3610. The medicaid director shall adopt 312
rules under section 5162.02 of the Revised Code as necessary to 313
implement the medicaid school component of the medicaid program, 314
including rules that establish or specify all of the following: 315

(A) Conditions a board of education of a city, local, or 316
exempted school district, governing authority of a community 317
school established under Chapter 3314. of the Revised Code, the 318
state school for the deaf, and the state school for the blind 319
must meet to participate in the component; 320

(B) ~~Services~~In addition to the services specified in 321
sections 5162.368 and 5162.369 of the Revised Code, services the 322
component covers; 323

(C) Payment rates for the services the component covers. 324

The rules shall be adopted in accordance with Chapter 119. 325
of the Revised Code. 326

Sec. 5162.54. (A) There is hereby created in the state 327
treasury the health care services administration fund. Except as 328

provided in division (C) of this section, all the following 329
shall be deposited into the fund: 330

(1) Amounts deposited into the fund pursuant to sections 331
5162.12, 5162.40, and 5162.41 of the Revised Code; 332

(2) The amount of the state share of all money the 333
department of medicaid recovers each fiscal year pursuant to a 334
tort action under the department's right of recovery under 335
section 5160.37 of the Revised Code that exceeds the state share 336
of all money the department, in fiscal year 2002, recovers 337
pursuant to a tort action under that right of recovery; 338

(3) Subject to division (B) of this section, the amount of 339
the state share of all money the department of medicaid, in 340
fiscal year 2003 and each fiscal year thereafter, recovers 341
through audits of medicaid providers that exceeds the state 342
share of all money the department, in fiscal year 2002, recovers 343
through such audits; 344

(4) Amounts from assessments on hospitals under section 345
5168.06 of the Revised Code and intergovernmental transfers by 346
governmental hospitals under section 5168.07 of the Revised Code 347
that are deposited into the fund in accordance with the law; 348

(5) Amounts that the department of education pays to the 349
department of medicaid, if any, pursuant to an interagency 350
agreement authorized by section ~~5162.363~~5162.361 of the Revised 351
Code; 352

(6) The application fees charged to providers under 353
section 5164.31 of the Revised Code; 354

(7) The fines collected under section 5165.1010 of the 355
Revised Code; 356

(8) Money the department receives in a fiscal year for performing eligibility verification services necessary for compliance with the independent, certified audit requirement of 42 C.F.R. 455.304, other than the amounts of such money that are to be credited to the health care/medicaid support and recoveries fund under section 5162.52 of the Revised Code.

(B) In determining under division (A) (3) of this section the amount of money the department, in a fiscal year, recovers through audits of medicaid providers, the amount recovered in the form of vendor offset shall be excluded.

(C) The department of medicaid shall use funds available in the health care services administration fund to pay for costs associated with the administration of the medicaid program.

Sec. 5162.64. (A) There is hereby created in the state treasury the medicaid school program administrative fund.

(B) Both of the following shall be deposited into the medicaid school program administrative fund:

(1) The federal funds the department of education receives for the expenses the department incurs in administering the medicaid school component of the medicaid program created under section 5162.36 of the Revised Code;

(2) The money the department collects from qualified medicaid school providers in the process established in rules authorized by section ~~5162.363~~ 5162.361 of the Revised Code.

(C) The department of education shall use money in the medicaid school program administrative fund for both of the following purposes:

(1) Paying for the expenses the department incurs in

administering the medicaid school component of the medicaid 385
program; 386

(2) Paying a qualified medicaid school provider a refund 387
for any overpayment the provider makes to the department under 388
the process established in rules authorized by section ~~5162.363~~ 389
5162.361 of the Revised Code if the process results in an 390
overpayment. 391

Section 2. That existing sections 5162.01, 5162.36, 392
5162.361, 5162.362, 5162.363, 5162.364, 5162.365, 5162.54, and 393
5162.64 of the Revised Code are hereby repealed. 394