

**“Bridge to Understanding”**  
**2007 NAME Annual Conference**

*Walking the Medicaid-Education Tightrope*

Lawrence Charny  
*The Charny Group*

Karen Norlander, Esq.  
*Counsel to Council of New York  
Special Education Administrators*

# The dangers lurking in the provision of health services in a school setting – a radical IDEA!

The controversy about Medicaid reimbursement has its roots in a long-term policy disagreement between schools and CMS and its predecessor, the Health Care Financing Administration (HCFA).

The disagreement concerns whether schools should be reimbursed for health care services and the administration of those services that they would be required to provide under the IDEA regardless of the level of federal funding.



*"I've never seen Mom this angry before."*

It has always been a critical responsibility for state and district special education directors to obtain sufficient funding to cover ever increasing costs of services for students with disabilities.

Medicaid was seen as a possible source of support for certain school-based services.



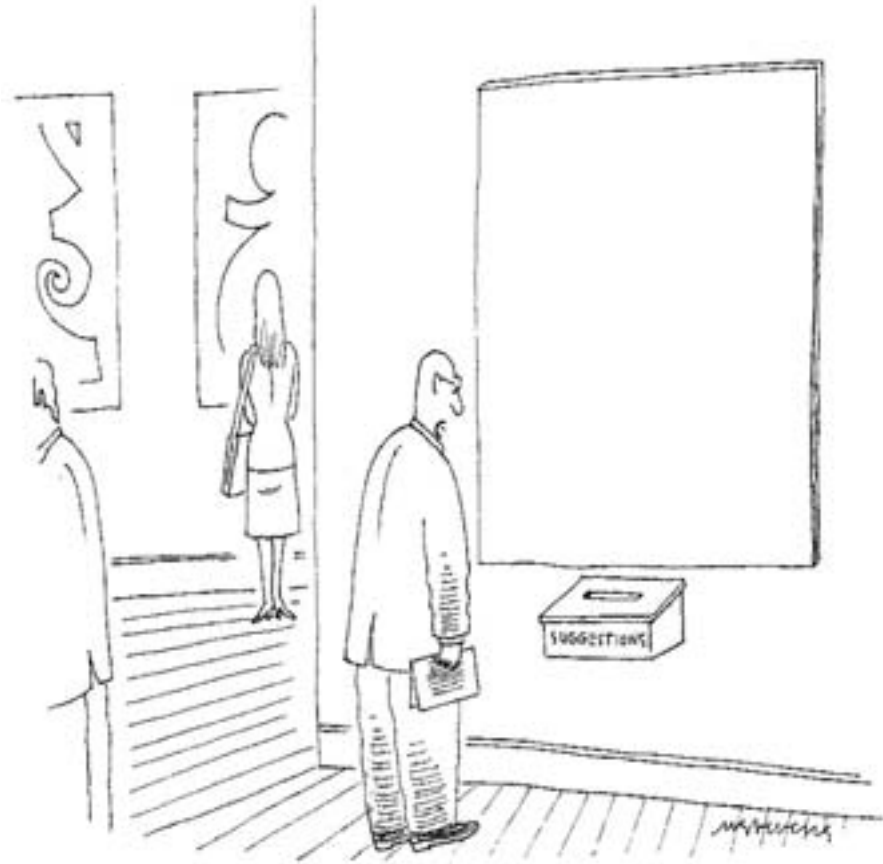
*"Hold it! We almost forgot your backdated stock options."*

- The 1988 Medicare Catastrophic Coverage Act - offered a world of possibilities.
- State plans included coverage of health related services that were being provided in schools and institutions for children with disabilities.

## An uncertain relationship....

The relationship between Medicaid funding for health related school based services presented unique challenges for educators who had to learn how to:

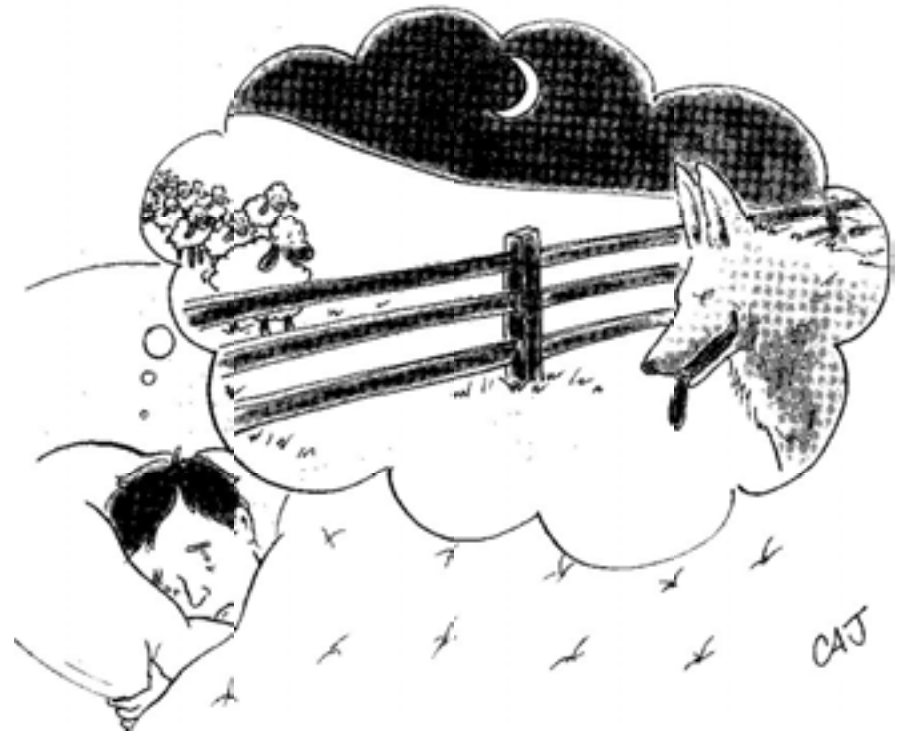
- follow Medicaid's procedures
- accommodate Medicaid's frequent and sudden policy changes
- interpret and apply guidelines and policy directives from CMS AND
- speak a new language.



# LEA concerns were expressed early....

Difficulties distinguishing between medical and educational activities and, thus, clearly identifying which IDEA-related services Medicaid can be expected to cover. For example:

- it is frequently unclear whether speech and language therapy are medical (rehabilitative) or educational (developmental) in nature
- occupational therapy, such as fine motor coordination or handwriting therapy, is also a service that may or may not qualify for Medicaid coverage.



## Documentation demands

Medicaid documentation requirements are more burdensome than those of IDEA, leading states to reconsider or become discouraged from filing claims for Medicaid reimbursement.

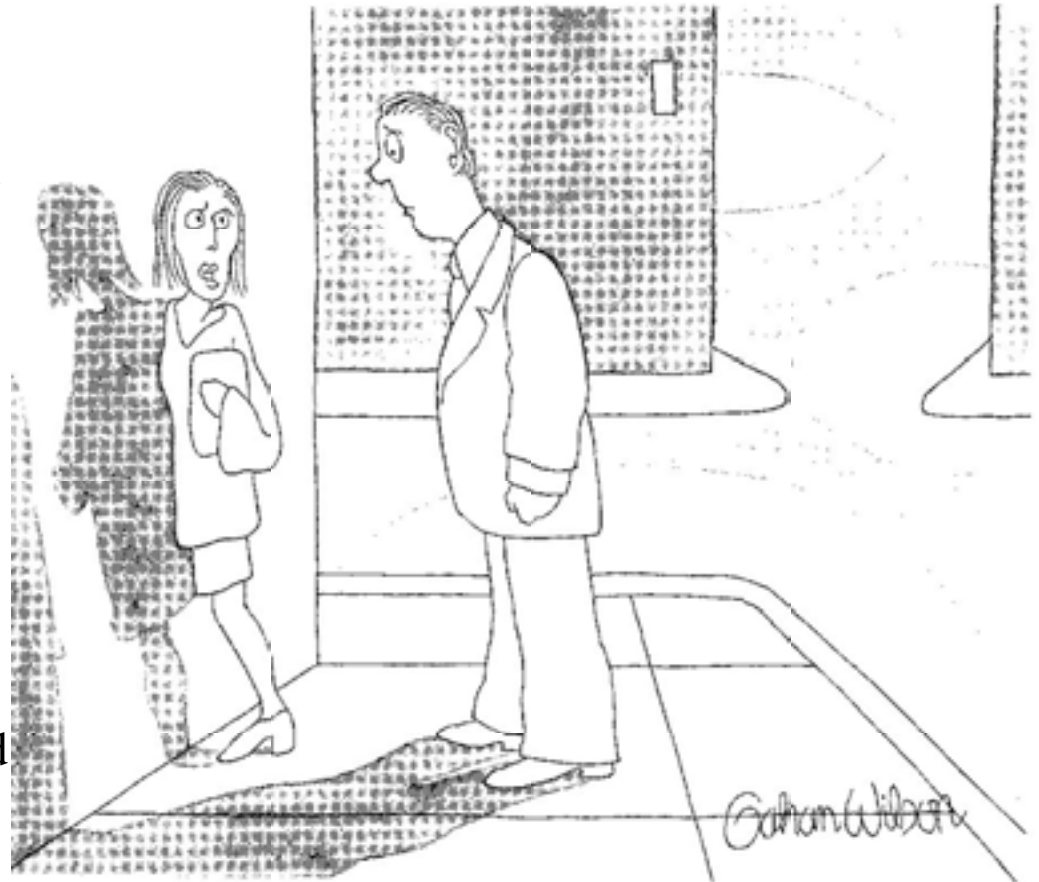
# INTERNATIONAL HOUSE OF PAPERWORK



# A setting does not a claiming status make....

IDEA services must be delivered wherever a student with a disability is located whether:

- confined to home
- a hospital
- a juvenile correction facility
- another state facility
- or any other location where the child is placed by a public agency



*"Well, if you can't walk through walls this is where I say goodbye."*

## And the litigation begins....

- Bowen v. Massachusetts, 487 U.S. 879 (1988).
- Detsel v. Sullivan, 895 F.2d 58(2d Cir.1990).
- Hunter v. Chiles, 944 F.Supp. 914 (D. Fla. 1996).

And the issue is: *location, location, location.....*



# Medical /Educational Comparison

## Medical diagnosis

- Made by physician
- Based on an assessment of symptoms and diagnostic tests
- Physician can choose from a variety of medical disorders

## Educational determination

- Made by multidisciplinary evaluation team comprised of various school professionals
- To determine whether a student qualifies for special education and related services
- Team is limited to the 13 disability categories of educational disabilities

# Distinction between medical diagnosis and an educational determination of a disability: why some students receive special education services and others don't.

- A medical diagnosis of a disability doesn't automatically entitle a student to special education services under IDEA, rather, it is based on an educational determination of a disability
- An educational determination of a disability is used to determine only eligibility for special education and related services. The services received are not based on the disability category, but on the student's current learning needs.



*"I'm going to write a figure on this paper. You tell me if it looks like a turtle."*

For example, let's look at OT/PT

## **School-based model**

- Must relate specific educational outcome to the interventions recommended
- Focus of intervention is directed toward the achievement of functional tasks required to participate and benefit from specific education placement

## **Medical /Clinical Model**

- Tends to focus on discipline-specific goals that may not have a direct relationship to educational performance
- Focus of intervention is directed toward achieving isolated motor skills

Therefore, these would be some of the considerations in selecting a provider of OT/PT services within a school

- Ability to evaluate the functional performance of student within school environments
- Ability to integrate related services with IEP objectives
- Ability to document progress and intervention results and to relate this information to the child's goals and objectives
- Ability to interpret the role of the therapeutic intervention to educational personnel, administrators, parents, etc.

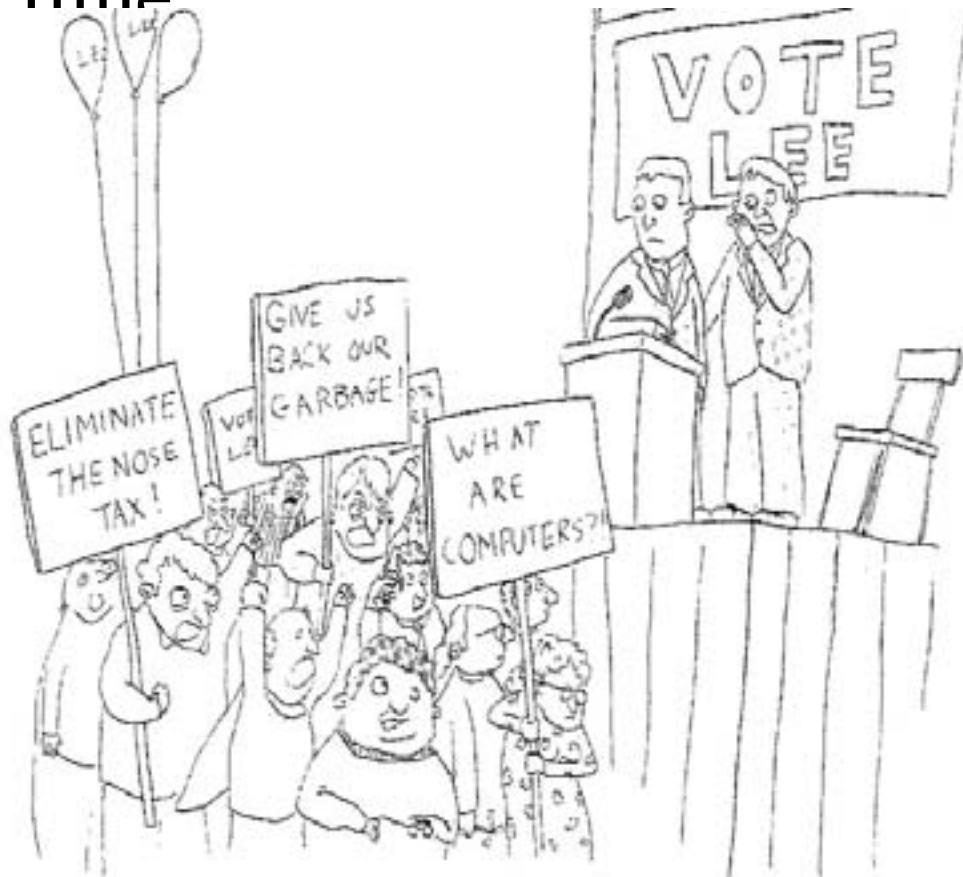
Licensure, certification, qualifications....who determines who can do what where.

- Coordinating the differing requirements of the provision of Medicaid and IDEA services can be challenging.
- Required qualifications for Medicaid providers may be different than the standards of local school districts, thus limiting the reimbursement that can be obtained under Medicaid.

# General agreement on what is needed at this

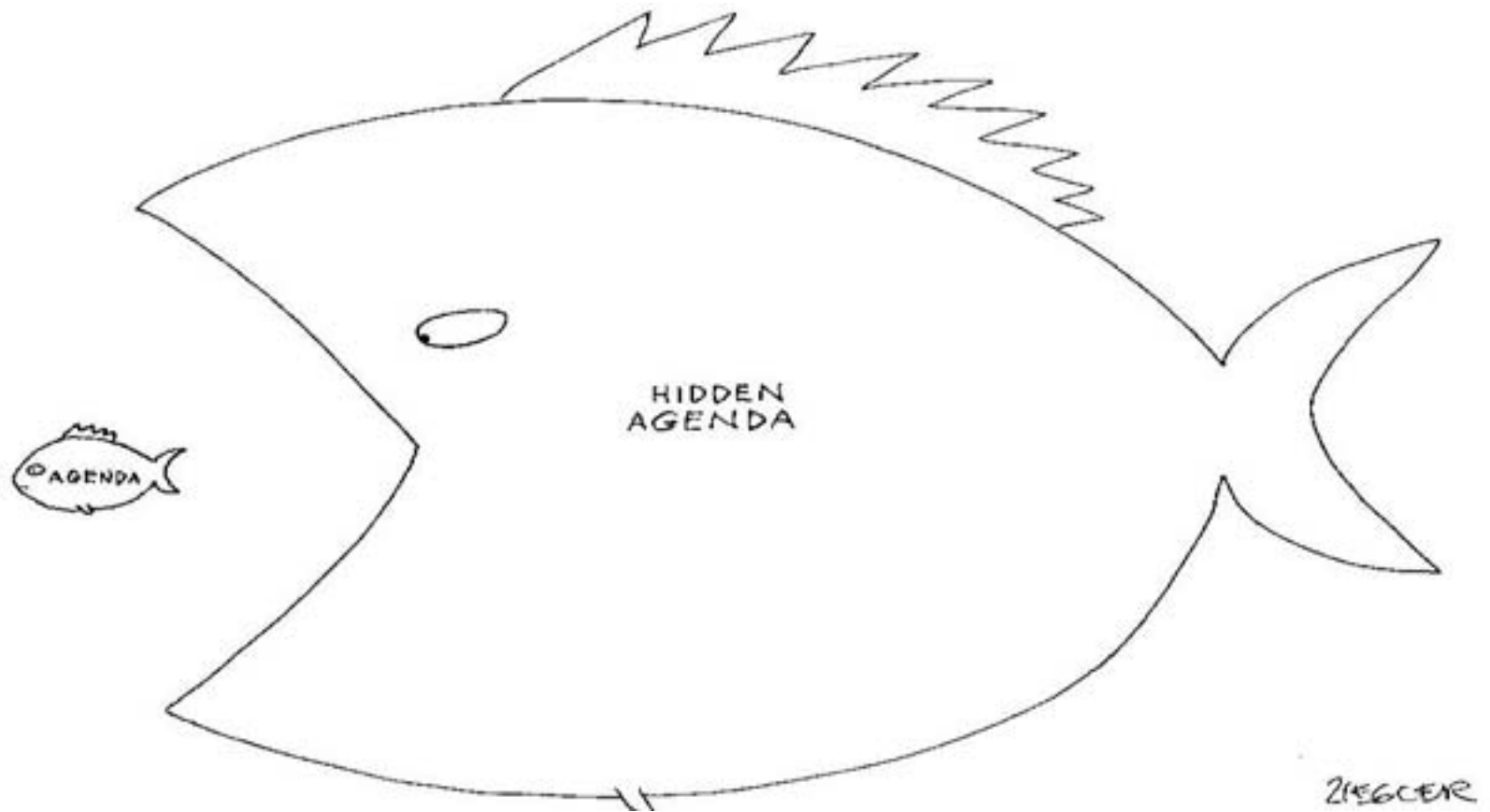
time:

- Direct and effective communication and collaboration between the education and Medicaid agencies of each state
- Strong understanding of the vocabulary used by each agency
- Understanding the intent of each others goals
- Developing a common language in the service of a common intent of these programs



*"We may need a clearer message."*

Too late to be an innocent....



# Getting past resignation and denial!

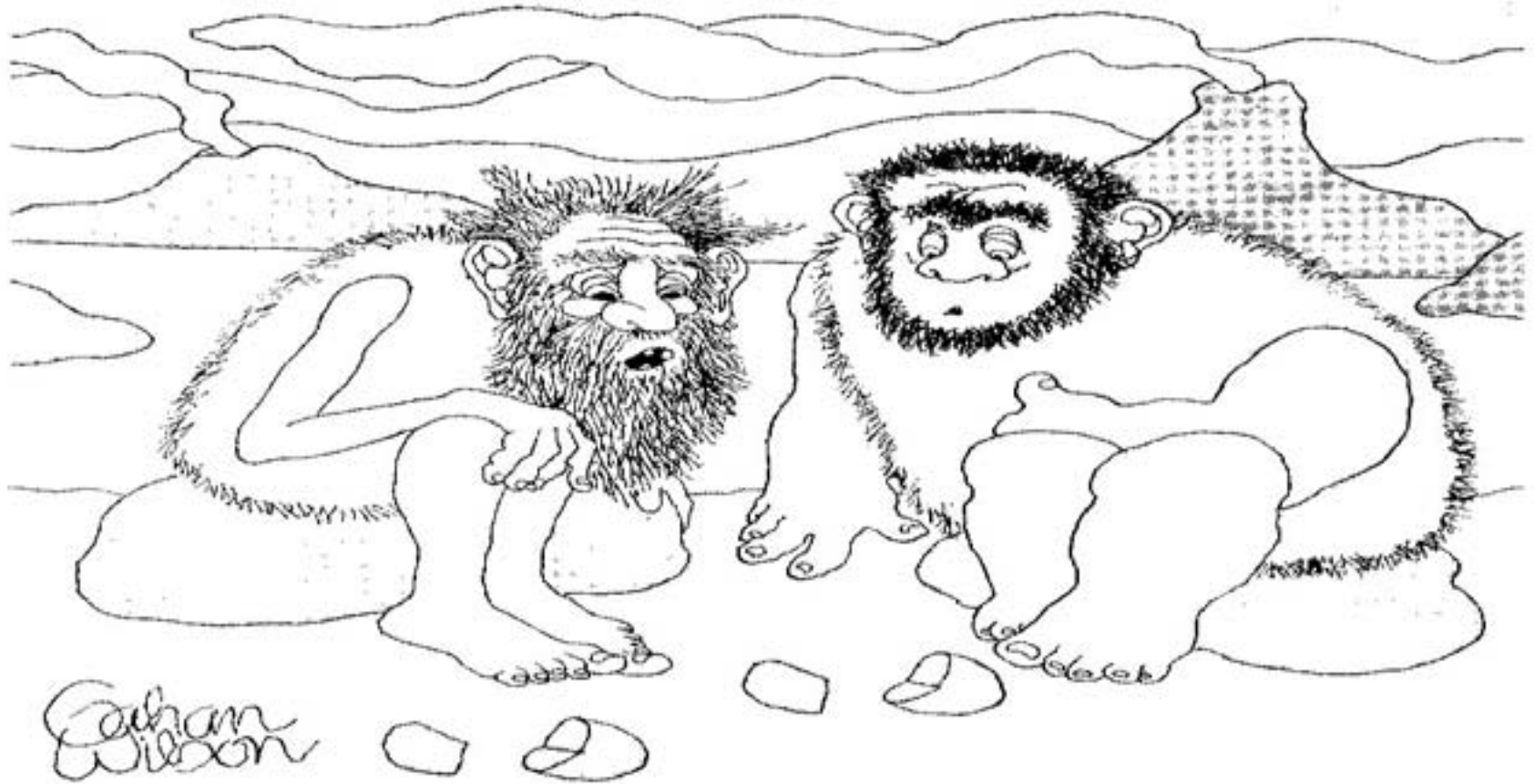
Increasing demands and restrictions coming from all directions:

- Fraudulent claims training
- Transportation
- Administrative claiming
- Parent consent
- Licensure and certification
- Etc.
- Etc.
- Etc.
- ?
- ?





...and, in conclusion.  
(Not really....)



*"There—now I've taught you everything I know about splitting rocks."*