The New Jersey Speech-Language-Hearing Association (NJSHA) thanks you for this opportunity to testify on the proposed regulations put forth in N.J.A.C. 6A:23A. NJSHA appreciates your clarification of requirements to sign off on Medicaid found under N.J.A.C. 6A:23A-5.3 **Failure to maximize Special Education Medicaid Initiative (SEMI)** (e) (2) iv., which would align with federal SEMI regulations at 42 CFR 440.110 (c). NJSHA is concerned, however, about the mandate under N.J.A.C. 6A:23A-5.3 (a), that states “Every school district and county vocational school district (CVSD)… shall take appropriate steps to maximize its revenue from the Special Education Medicaid Initiative (SEMI) Program by following the policies and procedures to maximize participation in the program as set forth in… and to comply with …regulations.”

The new regulations will help districts differentiate between required Medicaid reimbursement qualifications for speech-language specialists (SLSs) who provide evaluation services versus those needed to provide related services. The proposed regulations state that related services may be performed by an SLS/SLP, who holds a Certificate of Clinical Competence (CCC) from the American Speech-Language-Hearing Association (ASHA) or its equivalent, such as a valid license as a speech-language pathologist (SLP) from the NJ Division of Consumer Affairs as authorized by the State Audiology and Speech-Language Pathology Advisory Committee. NJSHA agrees that it is true that holders of either of these credentials can provide therapy under Medicaid. We also agree with the proposal under N.J.A.C. 6A:23A-5.3 (e) 2. vi (2)(A) and (B), that requires referral to Medicaid to be made by an SLS who is a New Jersey Division of Consumer Affairs’ licensed SLP. This is especially important since in 2010, as you may already know, New Jersey was cited for fraud because of referrals to Medicaid by SLSs who did not have this licensure. ([http://www.oig.hhs.gov/oas/reports/region2/20701052.pdf](http://www.oig.hhs.gov/oas/reports/region2/20701052.pdf)).

To avoid misinterpretation, because of the fact that Medicaid is not solely an education initiative, NJSHA suggests that the proposed regulation under N.J.A.C. 6A:23A-5.3 (e) 2. vi. use the title “Speech-Language Pathologist” in the regulations under services for Medicaid instead of Speech-Language Specialist. Federal Medicaid regulations use the term Speech-Language Pathologist because, as you acknowledge, that is the ASHA credential required for Medicaid reimbursement. Other categories listed in this section including occupational therapist and physical therapist use federal terms. The previous use of Speech Therapist caused confusion, as will the proposed use of SLS, because there are holders of SLS equivalent certificates, who continue to work in the schools in New Jersey. There also are individuals who have SLS certificates, but have neither ASHA CCCs nor New Jersey SLP licensure, including some who are first time employees who must complete requirements to obtain these additional credentials.
The proposed requirements under N.J.A.C. 6A:23A-5.3 (e) charge school districts that apply for Medicaid with using speech-language staff that are appropriately qualified to sign off on Medicaid, thus bringing in millions of dollars to New Jersey school districts. Though Medicaid brings in this money, districts may use these funds in any way they choose.

NJSHA wants to emphasize here, again, that SLSs who work in the schools under Department of Education (DOE) certification are required to hold neither ASHA CCCs nor NJ State Licensure. To secure and maintain these credentials, SLSs must personally pay ASHA an initial membership/certification fee of over $400 and minimum yearly dues of $275, as well as biennial dues of $170 to the NJ Division of Consumer Affairs. It is also important to note that to maintain a license and ASHA CCC, in addition to dues, SLPs must accrue continuing education units (CEUs) that are specific to the field of speech-language pathology and are ASHA approved. DOE professional development regulations at NJAC 6A:14-1.2 (b) also state that the in-service training needs for professional . . . staff who provide special education, general education or related services are identified, and appropriate in-service training should be provided. This often is not the case for SLSs.

Although a plethora of money is received for Medicaid, most SLSs in school districts are not compensated for their professional dues and continuing education for the credentials needed to satisfy the requirements for one to sign off on Medicaid. In addition, many SLSs have reported that they are not able to receive permission and/or funds to attend appropriate professional development programs needed to maintain the additional credentials they are required to have for Medicaid reimbursement documentation.

Because the department is attempting to maximize applications for reimbursement from Medicaid for eligible students at N.J.A.C. 6A:23A-5.3, NJSHA also appreciates your mandate under N.J.A.C. 6A:23A-5.3 (a) that policies and procedures be followed and that districts must comply with all program requirements. However, NJSHA can state that over the past two decades or more, the Association has received a multitude of questions about district requests and demands for SLSs to sign off on Medicaid when these policies and procedures are not being followed. The most current State of New Jersey School Based Medicaid Reimbursement Program Provider Handbook (SEMI handbook) states, "Both state and federal guidelines must be met in order for services to be eligible for reimbursement." Medicaid requires providers to keep records for each individual receiving services. These records must contain all screening elements. Documentation also must include the following:

- dates of service;
- who provided the service;
- where the service was provided;
- any required medical documentation;
- medical condition of the recipient;
- length of time required for service; and
- third party billing information
In addition, SLSs must keep individual records that include treatment notes and service logs, along with procedure details and diagnosis. (See http://www.asha.org/policy/GL2005-00056.htm#sec1.4) Performing such tasks is time consuming and if they are not completed appropriately, an SLS can be at risk for losing ASHA certification and/or SLP licensure; hence the concern of many of our members when signing off on their own therapy.

Another equally important issue relates to signing off for a practitioner who is "under the direction of a Medicaid qualified practitioner…," in N.J.A.C. 6A:23A-5.3(e). The SEMI handbook is clear about the meaning of "under the direction of…" as follows:

“Under the direction” means that the ASHA-certified or licensed personnel:
• Maintains responsibility for the services delivered;
• Sees the student, at least, once;
• Provides input into the type of care provided;
• Monitors treatment status after treatment has begun;
• Meets regularly with the staff being supervised; and
• Is available to the supervised staff.

ASHA is very clear that any SLP "signing off" without providing direct supervision to one who is not certified, risks losing ASHA certification. This may apply to licensure as well. If "under direction of…" requirements are not completed appropriately when a Medicaid qualified SLS/SLP is asked to sign off for someone who does not have the appropriate credentials, to do so would pose ethical issues for anyone holding a CCC from ASHA or licensure from the NJ Division of Consumer Affairs by causing them to inadvertently commit fraud. Additionally, because anyone who signs off on Medicaid is legally responsible for the therapy being provided, the Medicaid qualified SLS/SLP runs the risk of being held liable and taken to court by a parent if any damage occurs in the future. This legal action falls under SEMI regulations, not education regulations.

Another concern about signing off is that of SLSs being asked to “supervise” a colleague when they do not hold a NJDOE Supervisor Certificate and are not being paid as a supervisor. Although NJSHA has been told that those signing off are “not really” acting as supervisors, according to the SEMI handbook, they are supervising any individual for whom they sign off and they are obligated not to sign off if they believe that individual is not providing appropriate therapy.

NJSHA believes signing off on Medicaid for someone else's work should be an individual’s choice, not a mandate. Many SLSs are unaware of these issues. Those who are aware, frequently are forced to choose between insubordination accusations or retaliation from district administrators if they refuse to sign off, or possible sanctions from ASHA or the NJ Division of Consumer Affairs if they sign off without compliance to SEMI regulations.

Much confusion about Medicaid regulations exists and more effective and consistent training within schools on regulations and oversight on time provided to complete the job within SEMI parameters for signing off on "under the direction of…" is sorely needed. Moreover, NJSHA believes it would be naïve to assume that all districts are, or will be, sensitive to time needed by SLSs to do this job. NJSHA
has heard from few SLSs who have been given adequate time for Medicaid responsibilities and many who have not. Because school districts participating in SEMI reimbursement are mandated to comply with SEMI program requirements, NJSHA urges the Department to include a provision under N.J.A.C. 6A:23A-5.3 Failure to maximize Special Education Medicaid Initiative (SEMI) (e) that requires districts to provide adequate time to complete required Medicaid tasks by certified/licensed practitioners who are being asked to sign off on Medicaid documentation and to define what that time entails.

For a review of ethical and legal issues posed by signing off on Medicaid, NJSHA invites the Board to read about many of the above Medicaid issues at http://www.asha.org/policy/GL2005-00056.htm. At this site, ASHA, the association cited in Medicaid regulations, also provides advice on time allotment and reduction of caseload and other workload responsibilities for those who provide "under direction of…" assistance.

Furthermore, according to reports to NJSHA, although required by federal and state regulations under N.J.A.C. 6A:14 and the Individuals with Disabilities Education Act (IDEA) respectively, a good number of school districts do not hire an adequate number of SLSs to perform their tasks as child study team members and service providers. Additionally, SLSs are given the extra job of Medicaid documentation and in many cases are not provided with time needed to perform those obligations as per SEMI policies and procedures. If there truly were adequate numbers of SLSs hired in each district to perform Medicaid as well as other workload responsibilities, this may not be a problem. Therefore, since the NJ State Board of Education wishes to maximize Medicaid income, NJSHA respectfully requests that it ensures that the Office of Special Education Compliance monitors the time provided for district SLSs to perform these duties appropriately.

Also, in view of the above confusion about titles and roles of SLSs in the schools, NJSHA suggests that New Jersey institute universal licensure for SLPs, which has become the practice in eighteen states. Combining the SLS certificate with the SLP license from the Division of Consumer Affairs would avoid a great deal of the current confusion for Medicaid, as well as for educators who may not understand all of the areas of speech and language addressed during therapy sessions. SLP is the title used to name the practitioner who delivers the related service of speech-language pathology in the IDEA, 34 CFR §300.34 (c) (15). It also is a title that is respected by parents who often think that SLSs are less qualified than other SLPs.

We understand and agree that current SLSs, who do not meet requirements for licensure as SLPs, should maintain their ability to work in public schools, but future graduates, as well as school districts, would benefit from having both credentials. Since speech-language pathology services are the related services most frequently applied for under Medicaid, it is important to clarify the existing confusion over these services. From past experience, NJSHA asserts that this will not be accomplished without universal licensure and without more effective and consistent training on regulations and granting of time allotments within schools for signing off on "under the direction of…" Medicaid documentation.
In sum, NJSHA requests the following changes to the proposed regulation:

- NJSHA suggests that the proposed regulation under N.J.A.C. 6A:23A-5.3 (e) 2. vi. use the title “Speech-Language Pathologist” under services for Medicaid instead of Speech-Language Specialist. Federal Medicaid regulations use the term Speech-Language Pathologist because, as you acknowledge, that is the ASHA credential required for Medicaid reimbursement.

- Because school districts participating in SEMI reimbursement are mandated to comply with SEMI program requirements, NJSHA urges the Department to include a provision under N.J.A.C. 6A:23A-5.3 Failure to maximize Special Education Medicaid Initiative (SEMI) (e) that requires districts to provide adequate time to complete required Medicaid tasks by certified/licensed practitioners who are being asked to sign off on Medicaid documentation.

- Include a provision that ensures that the Office of Special Education Compliance monitors the time provided for district SLSs to perform duties related to SEMI appropriately.

Finally, NJSHA requests clarification of the following:

- How will the Board assure that the regulation at N.J.A.C. 6A:23A-5.3 (a), stating that districts follow, "the policies and procedures to maximize participation in the program . . . and to comply with all program requirements . . ." will be implemented with fidelity?

- Will the Board encourage districts to hire sufficient numbers of SLSs to follow through on the above mandate, especially since Medicaid brings in sufficient amounts of money to do so?

We thank you for your attention and look forward to your response.