

Submitter : Mr. Bryan Pullen
Organization : Peoria Medicaid Consortium
Category : Academic

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2287-P-1016-Attach-1.PDF

Peoria Medicaid Consortium
Comments on CMS-2287-P
November 6, 2007

On behalf of the Peoria Medicaid Consortium representing over 280 school districts and special education cooperatives across Illinois, we strongly oppose Rule CMS-2287-P.

Reimbursement for Medicaid Administrative Claim

The current Illinois school-based Medicaid administrative claiming program was developed in coordination with, and was approved by, the Centers for Medicare and Medicaid Services (CMS) in 2004. A federal Medicaid audit of the program conducted in 2004 - 2005 revealed that the program is in full compliance with federal requirements.

Illinois Local Education Agencies (LEAs) perform a vital role in providing Medicaid administrative outreach activities for Illinois children and their families as required by the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) provisions of the Social Security Act. Our EPSDT performance would be impossible for the State to match unless the State hired far more Medicaid personnel. The Illinois State Medicaid agency has forged an effective partnership with hundreds of school districts in Illinois under which we perform Medicaid administrative activities on the State's behalf. We work closely with the Illinois Medicaid agency to ensure that we perform administrative activities that fulfill CMS' EPSDT mandate.

To answer CMS' accusation of fraudulent or improper billing activities, CMS does not point out that there have, in fact, been OIG audits of school-based Medicaid administrative claiming programs that did not identify any significant claiming errors. Since 2002, audited school-based programs received a total of \$251,606,237 in FFP during their respective audit periods. Of the total FFP, the OIG found \$17,843,283 to be unallowable due to correctable errors, which represents only about 7% of the total FFP. This does not include the OIG audit findings in one state where the state Medicaid agency determined that correcting the error found and recalculating the claim as the OIG recommended resulted in a CMS underpayment instead of an overpayment. For the Illinois audit, less than .02% of the total FFP was found to be unallowable which was due to a programming error. The programming error was immediately corrected and the unallowable amount was promptly refunded to the federal government.

We recommend that, if CMS identifies claiming issues in particular states, that CMS work with the appropriate state agencies to improve those programs rather than eliminate reimbursement for programs that are compliant with federal requirements. We make every effort to comply with federal and State requirements in providing administrative outreach services for Medicaid-eligible children and their families. Why should we be punished for schools, states, or vendors that do not follow the rules?

Reimbursement for Transportation Services

In accordance with current federal and State Medicaid billing rules, Illinois LEAs receive reimbursement on a limited basis for specialized transportation services provided for a child with disabilities. We receive reimbursement only if:

- the child is eligible for Medicaid benefits,
- the child's IEP requires the child to receive specialized transportation,
- the student log maintained for the bus trip documents that the student rode the bus that day
- the child receives another Medicaid-covered service on the same day, and
- the transportation vehicle is specially adapted to accommodate the child's disability.

Children receiving specialized transportation have mental and/or physical disabilities that preclude their use of regular, non-adapted, school busses. Medicaid does not pay for transportation services provided to students with disabilities who are able to ride regular school busses. Medicaid does not pay for transportation with specially-adapted busses on days when children with disabilities do not receive any other Medicaid-covered service.

CMS has provided sporadic, evolving, sometimes inconsistent guidance to school districts regarding the Medicaid reimbursement requirements for school-based transportation. In identifying problems with transportation billing by school districts, the GAO stated in a report that CMS's "attempt to clarify transportation policies for school-based services has been interpreted differently among regional offices, resulting in inequitable treatment of school district claims for special transportation needs."

In its proposed rule 2287-P, CMS would eliminate Medicaid reimbursement for transportation services provided for all children with disabilities. The proposed rule revises 42 CFR § 431.53 as follows:

- “(a) A State plan must –
 - (1) Specify that the Medicaid agency will ensure necessary transportation for recipients to and from providers; and
 - (2) Describe the methods that the agency will use to meet this requirement.
- (b) For purposes of this assurance, necessary transportation does not include transportation of school-age children between home and school.”

The proposed rule contradicts itself by allowing, in subparagraph (a)(1), transportation “for recipients to and from providers”, while, in subparagraph (b), ignoring that a school district can be a qualified Medicaid provider.

Under current Medicaid law, CMS cannot deny reimbursement for school-based transportation services simply because the services are provided by a school district and are included in a child's IEP. Further, denying transportation services for one class of providers that are best suited to provide certain services violates federal regulations

requiring comparability in the amount, duration, and scope of services. (42 C.F.R. 440.240)

To support the proposed elimination of Medicaid reimbursement, the CMS Medicaid Fact Sheet uses the OIG audit of transportation services involving the New York City Department of Education. The audit resulted in a finding of a significant Medicaid overpayment with many issues related to documentation. However, the CMS Fact Sheet does not specify that the audit period spanned nearly eight years, including many years that were prior to CMS's 1999 guidance to school districts regarding the appropriate documentation of transportation services. Once again, CMS used inaccurate and misleading statements to support a proposed rule that is arbitrary on its face. The U.S. public deserves a higher standard of transparency and accountability in the federal rule-making process.

Therefore, we respectfully request that CMS retract this proposed rule to the extent that it applies to school-based Administrative Claim and Fee-for-Service Transportation.

Respectfully,

Bryan Pullen, Director
Peoria Medicaid Consortium

Submitter : Dennis Mobley
Organization : County Schools Office
Category : Other Association

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

Resolutions Opposing U.S. Department of Health and Human Services Rule CMS 2287-P

WHEREAS, the U.S. Department of Health and Human Services has published proposed Rule CMS 2287-P that would stop school districts and county offices of education from receiving federal reimbursement for Medicaid services provided to children with disabilities at an estimated cost of \$3.6 billion over five years; and

WHEREAS, this rule would reduce the availability of and access to health and development services by students with Individual Education Plans (IEPs) and other low-income children with special needs for whom school is their primary site for healthcare delivery; and

WHEREAS, school districts and county offices rely on these reimbursements for such services as outfitting buses with specialized equipment; transporting children to school for their medical appointments; identifying students who need screenings and evaluations; and connecting children and their families with other needed services in their community; and

WHEREAS, the loss of these resources could mean that schools would have to lay off nurses and social workers, curtail their referral services, and/or scale back enhancements for school buses; and

WHEREAS, since many of these services are mandated under the Individuals with Disabilities Education Act (IDEA) law, this action would substantially increase the burden on already financially-strapped local educational agencies and could impact students in regular education programs as well as result in cuts to electives, after-school activities, arts and music programs, and/or reductions in teachers and support positions; and

WHEREAS, the SANDABS Executive Committee touches every region of San Bernardino County through the elected representatives of school board members, district superintendents and the County Superintendent;

NOW, THEREFORE, BE IT RESOLVED that the San Bernardino County District Advocates for Better Schools (SANDABS) opposes Rule CMS 2287-P, in order to protect the ability of the San Bernardino County Superintendent of Schools and the school districts it serves to provide the children of San Bernardino County with the health services they deserve.

Adopted this tenth day of October 2007 by the SANDABS Executive Committee (San Bernardino County District Advocates for Better Schools).

Submitter : Mrs. Sherry Vestal
Organization : Henry County Public Schools
Category : Local Government

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2287-P-1018-Attach-1.PDF



November 6, 2007

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-2287-P,
Mail Stop S3-14-22,
7500 Security Boulevard,
Baltimore, MD 21244

Dear Sir or Madame:

The purpose of this letter is to express my concerns regarding Rule 2287-P that proposes Medicaid reimbursement cuts to school divisions for school-based services. This proposal would eliminate Medicaid reimbursement for administrative claiming and transportation services in a specially adapted bus.

Henry County Schools, a provider since 1991, is one of the ninety six public school divisions in the Commonwealth of Virginia actively participating in the Medicaid Program. I adamantly oppose Rule 2287-P because the proposed bill would disqualify school divisions from receiving reimbursement for the same therapies that private agencies receive from the State Medicaid plan. School divisions are in enough financial stress without having the additional burden of providing medical services without receiving reimbursement.

One of the most important functions of school-based claiming is conducting outreach enrollment to ensure that students are adequately insured. This outreach program directly supports the Medicaid program which ultimately improves the health and wellness of children. I urge CMS to continue to allow all school divisions to receive reimbursement from Medicaid for administrative activities and transportation services.

Sincerely,

Sherry M. Vestal, RN
School Nurse Coordinator

Submitter :

Date: 11/06/2007

Organization : Children's Defense Fund

Category : Other

Issue Areas/Comments

GENERAL

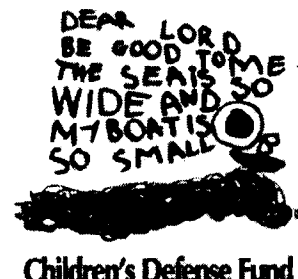
GENERAL

Please see attachment

CMS-2287-P-1019-Attach-1.PDF

November 6, 2007

Centers for Medicare and Medicaid Services
 Department of Health and Human Services
 Attention: CMS-2287-P
 Mail Stop S3-14-22
 7500 Security Boulevard
 Baltimore, MD 21244



Re: File Code CMS-2287-P

To Whom It May Concern:

The Children's Defense Fund (CDF) is a nonprofit, nonpartisan organization based in Washington, DC. The Children's Defense Fund's Leave No Child Behind® mission is to ensure every child a Healthy Start, a Head Start, a Fair Start, a Safe Start, and a Moral Start in life and successful passage to adulthood with the help of caring families and communities. CDF pays particular attention to the needs of poor and minority children and those with disabilities.

CDF has an almost 30 year history of advocating for health and mental health coverage for all children and increasing enrollment and children's access to appropriate services and treatment. In several of CDF's state offices, staff have worked closely with the State Medicaid offices to increase enrollment of children in both Medicaid and the State Children's Health Insurance Program (SCHIP). Important gains have been made but more than six million uninsured children continue to be eligible for Medicaid or SCHIP coverage they are not receiving.

CDF strongly opposes the Centers for Medicaid and Medicare Services (CMS) proposed rule to eliminate Medicaid matching payments for the costs of "administrative activities" conducted by school and school district personnel.¹ This proposed rule (proposed section 433.20) would irrevocably harm existing school-based efforts to enroll children in Medicaid, and to ensure that children get needed health care services. It ironically would restrict outreach to low-income children at the very time the President and the Administration claim to want to increase enrollment of low-income children in SCHIP and Medicaid. We urge CMS to withdraw the proposed rule.

CMS guidance issued in 2003 described the following critical services as "allowable Medicaid school-based administrative activities":

- Medicaid Outreach
- Facilitating Medicaid Eligibility Determinations
- Transportation Related Activities in Support of Medicaid Covered Services
- Translation Related to Medicaid Services

¹ Proposed rule published in the Federal Register on September 7, 2007.

- Program Planning, Policy Development, and Interagency Coordination Related to Medical Services
- Medical/Medicaid Related Training
- Referral, Coordination, and Monitoring of Medicaid Services

State Medicaid Agencies sometimes contract with state or local education agencies to provide these services. If implemented, the proposed rule would eliminate Federal Financial Participation (FFP) for these services delivered in schools unless the services are conducted by employees of the State or local Medicaid agency. The basis of the proposed rule is a new finding by the Secretary of Health Human Services that Medicaid administrative activities performed by school personnel are not “necessary for the proper and efficient Administration of the state plan”. The new distinction as to who can perform approved activities is unfounded and misguided. In addition, this finding represents a significant reversal of long-standing policy.

Over the past ten years, the Department of Health and Human Services (HHS) and CMS have issued multiple reports and guidance to help school administrators and personnel both enroll children in Medicaid and ensure that Medicaid eligible children get needed services. As documented within the text of the proposed rule, CMS first developed detailed guidance in 1997 to allow schools and school districts to claim Federal Medicaid matching funds for administrative activities relating to Medicaid services. Three years later, a report by HHS in collaboration with the Department of Agriculture and the Department of Education stated that schools are a “natural setting” for conducting children’s health insurance program outreach, and that “State Medicaid and SCHIP agencies seeking the best return on outreach investments often find that working with schools simplifies targeting audiences, distributing information, reaching families, and enrolling children.”² Specifically, the report identifies the contributions of school personnel as one of several factors that “make schools a logical and successful site for outreach efforts”. The report goes on to describe the reasons that school personnel are so well-positioned to perform outreach services:

- Many schools and Head Start programs already have a school nurse, health coordinator or other health care provider (e.g. staff of a school-based health center, community health care provider, etc.) who connects children and their families with health services. In these settings, there is already a connection between health and school.
- Families trust school officials, school teachers, nurses and other school personnel and the information they impart.
- Many schools already have a strong connection to community networks. These networks can assist schools in conducting outreach.
- Many schools provide health services to eligible children through school based health clinics.

A decision to allow Medicaid reimbursements for administrative activities in schools only if they are conducted by Medicaid state and local employees seems to ignore these findings. Because of their experience and relationships with students and their families, school personnel—not state or local Medicaid employees—are generally the best qualified, most suitable workforce to coordinate Medicaid

² Report to the President on School-Based Outreach for Children’s Health Insurance. Submitted by the Secretary of Health and Human Services in Collaboration with the Secretary of Agriculture and the Secretary of Education. July 2000.

enrollment and help children access needed health services. In addition, there is little evidence that state or local Medicaid agencies would have the resources or capacity to take on these additional activities in the schools. As a result such a restriction would seriously curtail critical outreach activities.

Many health policy experts recognize that school staff, especially school nurses, are a critical source of health information for families looking to enroll their children in a health insurance program. In his July 2006 testimony before Congress, then CMS Administrator Dr. Mark McClellan cited an example of a successful school nurse program to help enroll uninsured children.

“For example, in New Mexico, outreach through school nurse programs has been effective in reaching parents, informing them about the program, particularly for kids who are having any kinds of health difficulties.”³

However, under the proposed regulations, such a school nurse program would no longer be eligible for Medicaid matching funds. Many schools and school districts rely on the FFP for Medicaid administrative activities to pay for health related school personnel positions and will be unable to sustain these positions without the matching funds.

The proposed rule also would jeopardize the ability of children to receive necessary health and mental health services under Medicaid by eliminating federal matching funds for activities that states are required to carry out under Medicaid's Early and Periodic Screening, Diagnostic and Treatment (EPSDT) program. EPSDT requires states to make certain that all children enrolled in Medicaid receive regular check-ups, including vision, dental, and hearing exams, as well as necessary immunizations and laboratory tests and follow-up testing and treatment. States are mandated not only to inform families about the availability of EPSDT services, but also to help them access health and mental health services for their children. A number of states contract with school systems so that school nurses can inform families about EPSDT and help families arrange care. In some states, school personnel also help coordinate the care of those children enrolled in special education who have special health care needs. If the proposed rule were implemented, federal matching funds would no longer support school staff serving in these roles.

In addition to the harmful impact the proposed rule would have on existing outreach programs, the rule would also severely restrict promising new options for states to enroll uninsured children. In February 2007, the Lewin Group conducted an in depth analysis of Medicaid and SCHIP for the Children's Defense Fund that assessed several different methods for increasing enrollment in these programs.⁴ Their analysis found that outreach and enrollment conducted through schools is by far the most effective strategy for finding and enrolling uninsured children and should be expanded in states to increase enrollment of uninsured children. The proposed rule, however, moves practices in just the opposite direction. It would eliminate funding for this promising approach to enrolling eligible but uninsured children.

³ Transcript of the Hearing Before the Subcommittee on Health Care of the Committee on Finance United States Senate, 109th Congress, 2nd Session. July 25, 2006.

⁴ Analysis conducted by the Lewin Group for the Children's Defense Fund. February 2007. Report available upon request.

CDF recognizes that CMS is responsible for ensuring that federal dollars are being spent appropriately. If CMS suspects there are abuses in the activities of school personnel, as they relate to Medicaid reimbursement, such abuses should be addressed. We believe however that this could best be done by issuing clarifying guidance on the claims process and improving accountability, as CMS did in 2003⁵, rather than by simply eliminating funding for outreach and other activities undertaken by school personnel.

To extend appropriate health and mental health care to children, CDF believes it is essential to go to where children are and there is no more universal service offered to children than education. The Department of Health and Human Services' own research and that of other experts reinforce our belief. CMS should be expanding rather than severely limiting the ability of school personnel to assist with important outreach, enrollment, and treatment tracking activities. We strongly recommend that CMS withdraw the proposed rule and instead encourage school systems to collaborate with state Medicaid agencies to help all eligible children secure the health and mental health services they need.

Sincerely,

MaryLee Allen
Director, Child Welfare and Mental Health

Alison Buist
Director, Child Health

⁵ CMS issued guidance on school-based claiming in the "Medicaid School-Based Administrative Claiming Guide" in May 2003.

Submitter : Mrs. Cathy Faraone Bray
Organization : Los Angeles County Office of Education
Category : Other Government

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2287-P-1020-Attach-1.PDF



Los Angeles County Office of Education

Leading Educators • Supporting Students • Serving Communities

November 6, 2007

Dear Secretary Levitt:

Darline P. Robles, Ph.D.
Superintendent

Los Angeles County
Board of Education

Rudell S. Freer
President

Leslie K. Gilbert-Lurie
Vice President

Sandra Jones Anderson

Sharon R. Beauchamp

Angie Papadakis

Thomas A. Saenz

Sophia Waugh

I am writing on behalf of all 56 school districts in Los Angeles County who participate in the Medicaid Administrative Activities Program. As the Local Education Consortium Coordinator for Los Angeles County, I have worked directly with California Department of Health Care Services in the development and monitoring of this program. In that capacity- The Los Angeles County Office of Education strongly opposes CMS 2287-P and unequivocally urges you to withdraw the proposal to eliminate reimbursement under Medicaid for School Administration Expenditures and for costs related to Transportation of school-age children between home and school.

There is no question that schools serve as gateways to health care for some of the state's most vulnerable residents; including, special education/special needs students and children in families whose circumstances have limited their access to health care. School districts across the state assist their county Medi-Cal agencies in distributing information about the Medi-Cal program and linking, otherwise underserved portions of our population, to needed health care services. The proposed regulations will reduce school efforts of conveying and linking health services to medically compromised children in schools across California and the rest of the nation.

As you know, the negative impact of this regulation on California Schools is massive. While \$103 million is a modest amount compared to the overall Medicaid and Education budget, it is critical funding for school districts that are committed to improving health care access for their students.

If CMS-2287-P is enacted, California's school communities would lose funding for beneficial and effectual activities such as the following:

- Outfitting buses with specialized equipment
- Transporting children to school for their medical appointments
- Hiring staff to identify students who need screenings and evaluations
- Connecting students and their families with health services in their communities
- Coordinating services that schools must now provide in order to meet the multiple needs of students while trying to fulfill No Child Left Behind requirements
- Sustaining Healthy Start centers and health clinics
- Hiring nurses, social workers, and specialized health professionals

On behalf of the 56 school districts in Los Angeles County who participate in the MAA program I earnestly urge you to advance the federal, state, and local effort to provide early detection and treatment of preventable medical conditions among our school-age children. I strongly recommend that you withdrawal this proposed rule.

Sincerely,

Cathy Bray, RN MEd
Los Angeles County Office of Education
Region 11 LEC Coordinator

Submitter : Mr. Dennis W. Mobley
Organization : San Bernardino County Board of Education
Category : Other Government

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

On November 5, 2007, the San Bernardino County Board of Education adopted by unanimous vote a resolution opposing CMS-2287-P--Medicaid Program; Elimination of Reimbursement under Medicaid for School Administration Expenditures and Costs Related to Transportation of School-Age Children between Home and School. See Attachment.

CMS-2287-P-1021-Attach-1.PDF

**San Bernardino County Board of Education
November 5, 2007, Agenda Item 7.1.6**

Resolution Opposing U.S. Department of Health and Human Services Rule CMS 2287-P

WHEREAS, the U.S. Department of Health and Human Services has published proposed Rule CMS 2287-P that would stop school districts and county offices of education from receiving federal reimbursement for Medicaid services provided to children with disabilities at an estimated cost of \$3.6 billion over five years; and

WHEREAS, this rule would reduce the availability of and access to health and development services by students with Individual Education Plans (IEPs) and other low-income children with special needs for whom school is their primary site for healthcare delivery; and

WHEREAS, school districts and county offices rely on these reimbursements for such services as outfitting buses with specialized equipment; transporting children to school for their medical appointments; identifying students who need screenings and evaluations; and connecting children and their families with other needed services in their community; and

WHEREAS, the loss of these resources could mean that schools would have to lay off nurses and social workers, curtail their referral services, and/or scale back enhancements for school buses; and

WHEREAS, since many of these services are mandated under the Individuals with Disabilities Education Act (IDEA) law, this action would substantially increase the burden on already financially-strapped local educational agencies and could impact students in regular education programs as well as result in cuts to electives, after-school activities, arts and music programs, and/or reductions in teachers and support positions;

NOW, THEREFORE, BE IT RESOLVED that the San Bernardino County Board of Education opposes Rule CMS 2287-P, in order to protect the ability of the San Bernardino County Superintendent of Schools and the school districts it serves to provide the children of San Bernardino County with the health services they deserve.

Submitter : Mr. Christopher Rizzuto
Organization : Lemoore Union Elementary School District
Category : Academic

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

As an educator for the last 15 years and a current Director of Special Services, I can validate the position that it is increasingly more difficult to serve our students and families. Rather than elimination of funds that both directly and indirectly impact our families and community, there is a need to increase funding. Please reconsider any elimination to our MAA or LEA reimbursements. I have dedicated my life to working with children and families; this proposed action is exactly what is NOT needed. Thank you for your time and consideration.

Submitter :

Date: 11/06/2007

Organization :

Category : Government

Issue Areas/Comments

GENERAL

GENERAL

see attachment

CMS-2287-P-1023-Attach-1.DOC

Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
Attention: CMS-2287-P
P.O. Box 8018
Baltimore, MD 21244-8018

Dear Sir(s) or Madam(s):

The Council for Exceptional Children (CEC) is the largest professional organization of teachers, administrators, parents, and others concerned with the education of children with disabilities, gifts and talents, or both. As a member of CEC, I am writing in response to the September 7, 2007 *Federal Register* announcement requesting public comment on the Notice for Proposed Rule Making for the elimination of school administration expenditures and transportation for Medicaid-eligible children who receive services under Part B and Part C of the Individuals with Disabilities Education Act.

Introduction

I am deeply concerned about the devastating impact that the proposed Centers for Medicare and Medicaid Services (CMS) regulations for the elimination of reimbursements for transportation and administrative claiming under Medicaid will have on the welfare of children with disabilities. The elimination of these reimbursements would inevitably shift the financial responsibility for these claims to individual school districts and early childhood providers across the nation. The Administration estimates that the elimination of these reimbursements will provide a savings of \$635 million in the first year and \$3.6 billion over the next five years. However, there is no corresponding increase in funding for the federal special education law, the Individuals with Disabilities Education Act (IDEA), that will enable schools and early childhood providers to make up for the reduction in Medicaid reimbursements to schools and early childhood providers.

Major Issues and Concerns

I have major issues with the proposed rule to eliminate the Medicaid reimbursement for transportation and administrative claiming. I believe it is flawed and should be withdrawn. I recognize that the proposed rule, in some cases, seeks to address legitimate policy issues. However, according to the background for the proposed regulations, "school-based administrative activities do not meet the statutory test under section 1903(a)(7) of being 'necessary....for the proper and efficient administration of the State plan.'" I strongly **disagree** with this statement. The provision of transportation services and administrative claiming under Medicaid are indeed necessary for carrying out state Medicaid plans. Many medically provided services under Medicaid are provided at the school and early childhood settings where Medicaid-eligible children attend, whether or not those services are provided by employees of the state or the local Medicaid agency. This is particularly relevant because the background to the proposed regulations also states that, "CMS recognizes that schools are valid settings for the delivery of Medicaid services", yet the proposed rules would still not recognize the need for transportation to

and from school for Medicaid-eligible children who take advantage of these services at school and early childhood settings.

In addition, the proposed regulations state that they were drafted, “Due to inconsistent application of Medicaid requirements by schools to the types of administrative activities conducted in the school setting...” However, the studies that conclude that the misfeasance conducted by some schools in claiming Medicaid reimbursements only took into account an insignificant number of schools. CMS should rightly impose sanctions on those schools and early childhood providers that improperly or illegally misrepresent claims for Medicaid reimbursement; punishing every school and early childhood provider nationwide is not the proper course of action to take in this instance.

I believe that Congress and the Administration should work together to achieve consensus on appropriate policies and procedures to ensure that Medicaid beneficiaries receive the highest quality services, consistent with Title XIX of the Social Security Act, and to ensure that states operate their Medicaid programs to achieve the best outcomes and in the most publicly accountable manner. I believe that this proposed rule prevents a necessary dialogue between federal officials, state Medicaid officials, other state officials (including individuals responsible for programs for people with mental illnesses, developmental disabilities, and child welfare), services providers, and representatives of affected Medicaid populations. I am not aware of any meaningful effort by the Secretary of HHS or CMS to work with affected stakeholders to address current policy concerns. Indeed, I am troubled by dubious enforcement actions and audits by the HHS Office of the Inspector General (OIG) that have appeared more focused on limiting federal expenditures than improving the appropriateness or effective administration of services under Medicaid.

Legal Basis for Providing Transportation and Administrative Claiming

The proposed CMS regulations to eliminate Medicaid transportation and administrative claiming contradict current law. There is firm legal standing for the allowable use of Medicaid claiming for transportation and administration.

First, Section 1903(c) of the Title XIX of the Social Security Act states that “nothing in this title shall be construed as prohibiting or restricting, or authorizing the Secretary to prohibit or restrict, payment under subsection (a) for medical assistance for covered services furnished to a child with a disability because such services are included in the child's individualized education program established pursuant to part B of the Individuals with Disabilities Education Act or furnished to an infant or toddler with a disability because such services are included in the child's individualized family service plan adopted pursuant to part C of such Act.” Clearly the proposed regulations would be in direct conflict with this provision of law and would not further the purposes of Title XIX of the Social Security Act.

Second, school-based claiming was protected in the courts in the 1987 *Bowen* case, when the appellate court ruled that school-based Medicaid claims were reimbursable, and the Supreme Court elected to let that decision stand by denying cert.

Third, the proposed rules would not comply with Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services. Under current law, states must provide EPSDT services to all children who are eligible for the Medicaid program. This is one of the mandates that states must meet in order to operate a Medicaid program. Through EPSDT, Medicaid-eligible children must be seen periodically by health care professionals. In 1989 the law was amended to mandate that states provide any necessary Medicaid service that a child requires regardless of whether the state specifically covers the service as part of its regular Medicaid program. A state cannot restrict the services that it provides under the EPSDT mandate; it must make all types of services available, including the services children with disabilities require.

Fourth, under the Medicare Catastrophic Coverage Act of 1988, states are permitted to obtain limited funds for Individualized Education Program-related services and for early intervention/family support services as defined in the individualized family service plan (IFSP). The proposed regulations would deny legally allowable claims to provide services under IEPs and IFSPs.

Finally, the proposed rules would go beyond the regulatory scope and power of the Executive Branch and is inconsistent with Medicaid law. To the extent that policy changes are needed, I believe that the legislative process is the appropriate arena for addressing these issues.

Federal Cost Shifting and Reduced Levels of Service

The proposed rules for the elimination of the Medicaid transportation and administrative claiming will be a huge financial hit to already cash-strapped schools and early childhood providers. The federal government has not even provided half of the promised funds for the IDEA, and denying schools and early childhood providers in this country an additional \$635 million will only make a bad situation worse. This in turn will shift the financial burden to state and local governments to pay a greater share for required services under IEPs and IFSPs, and the frequency and/or intensity of those services may be reduced.

Conclusion

The proposed CMS rules to eliminate the transportation and administrative claiming for schools and early childhood providers under Medicaid are both misguided and contrary to existing legal precedent. For the reasons stated here, I urge the Secretary of Health and Human Services to withdraw the proposed rule.

Thank you for allowing the public to provide comments on the Notice for Proposed Rule Making for the elimination of school administration expenditures and transportation for school-age children under the Medicaid program, and thank you for considering my comments and recommendations.

Submitter : Mr. Edwin Stephens
Organization : The Agency for Health Care Administration
Category : State Government

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2287-P-1024-Attach-1.DOC

CMS-2287-P and its Impact on the State of Florida

In January 1, 1998, the Florida School District Administrative Claiming (SDAC) program was implemented. The Agency for Health Care Administration (AHCA), the Florida Department of Education (DOE) and individual school districts have shared in the responsibility of promoting access to health care for students in the public school system, preventing costly or long term health care problems for at risk students, and coordinating students' health care needs with other providers. Many of the activities performed by school district staff met the criteria for Medicaid administrative claiming. The primary purpose of the Medicaid SDAC program is to reimburse school districts for Medicaid outreach activities conducted on a daily basis.

The program allows school districts to be reimbursed for a portion of their costs associated with school based health and outreach activities, as permitted under previous federal CMS interpretations and regulations.

This proposed rule change will result in the loss of Title XIX revenue for the sixty-five participating school districts (of Florida's 67 school districts). The school districts will no longer be permitted to receive reimbursement for school based health and outreach activities unless performed by employees of the State or local Medicaid agencies. This will impact the following school districts services:

- care planning;
- service coordination;
- monitoring of health services;
- referrals; and
- Medicaid eligibility determinations.

The proposed rule will also restrict the school districts' ability to receive reimbursement for transportation services when transporting Medicaid recipients between home and school.

In state fiscal year 2006-07, Florida Medicaid made \$56,969,125 available to school districts under current federal guidelines. Under the proposed rule, this level of funding will be lost, and school districts will need to adjust funds accordingly.

The proposed rule will have a significant impact on Florida school districts as they will have to reallocate funds or reduce services to continue to perform Medicaid outreach activities to Medicaid eligible students.

Submitter :

Date: 11/06/2007

Organization :

Category : Social Worker

Issue Areas/Comments

GENERAL

GENERAL

The reimbursement for School Administration costs related to helping children access Medi-Cal funded health services is critical for schools in addressing the needs of children. Schools are the one agency that have the most contact with children ages 5 through 18. It is in the best interest of children that school personnel assist them in getting the health insurance and health services they need to be healthy. This is also in the best interest of schools in that healthy children are more able to learn and achieve their academic goals. Schools are the best vehicle for reaching children and their parents. Continue to support schools in performing this valuable role in assuring that all children have access to health care.

Submitter :

Date: 11/06/2007

Organization :

Category : State Government

Issue Areas/Comments

GENERAL

GENERAL

I strongly oppose the implementation of this rule change. Schools have become an important and cost effective provider of essential health services for disabled children. These children are transported to school on specialized vehicles and the loss of this funding would severely impact our school district and our ability to provide services to our disabled students. We also provide important outreach services to our families. This cut would not only impact our funding but also the services to our children. We have to stay focused on the children's needs.

Submitter : Dr. Thomas Koepke
Organization : Dr. Thomas Koepke
Category : Individual

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

The proposed elimination of these two programs unilaterally by the CMS is not in the best interest of children and adolescents with disabilities. The funds generated by these programs provide partial reimbursement for services which are essential to children's well being and also mandated by the federal government. For over three decades the federal government has required these services to children, yet has not provided the necessary funding to provide these programs.

The assertion from Director Dennis Smith that the administrative activities performed by schools are "not necessary for the proper and efficient administration of the State Medicaid plan" as the basis for the rule elimination is simply untrue. Schools provide the majority of therapeutic services to children with disabilities. School districts provide speech therapy, occupational therapy, physical therapy, nursing and other medically related services to tens of thousands of students daily across our nation. I realize that the funds received by the school districts in partial reimbursement are relatively small by federal standards. However, these funds for administration outreach and transportation are oftentimes critical to school districts in the implementation of the medically related services required by children with disabilities. Many of the school districts in Michigan are struggling given the economic recession.

It is obvious to many in education and health care that our federal Center for Medicare and Medicaid Services (CMS) is no longer an organization with the best interests of children and their families. The agenda of this current administration clearly places other priorities above the health and well-being of our most vulnerable citizens.

Submitter : Mrs. Susan Rose
Organization : South Carolina Appleseed Legal Justice Center
Category : Attorney/Law Firm

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

"See Attachment"

CMS-2287-P-1028-Attach-1.RTF

South Carolina Appleseed Legal Justice Center
P.O. Box 7187
Columbia, SC 29202

November 6, 2007

Department of Health and Human Services
Centers for Medicare & Medicaid Services
ATTN: CMS-2287-P

Via E-mail: [Http://www.cms.hhs.gov/eRulemaking](http://www.cms.hhs.gov/eRulemaking)

Re: 42 CFR Parts 431, 433 and 440
[CMS-2287-P]
RIN 0938-AP13
Elimination of Reimbursement under Medicaid for School Administration
Expenditures and Costs Related to Transportation of School-Age Children
between Home and School

To Whom It May Concern:

South Carolina Appleseed Legal Justice Center (SC Appleseed) is dedicated to advocacy for low-income people in South Carolina to effect systemic change by acting in the and through the courts, legislature, administrative agencies, community and the media, and helping others do the same through education, training and co-counseling. SC Appleseed seeks to improve the public school system so that it better serves low-income and minority students in South Carolina. By collaborating with the legal, educational, and social service communities to assess needs, SC Appleseed advocates for legislation and policies that ensure equal educational opportunities for all children. SC Appleseed also serves as a resource for community groups and individuals who wish to become active in their local schools.

We urge the Centers for Medicare and Medicaid Services (CMS) to not enact CMS 2287-P and appreciate the opportunity to provide the following comments.

The proposed elimination of reimbursements for transportation between home and school for special needs students receiving school-based Medicaid services represents a potential loss of between \$1.1 and \$1.5 million annually to the state of South Carolina- money which is billed and received by the Department of Education and shared with the local school districts to alleviate the cost of operating programs. The proposed elimination of reimbursements for school-based administrative support claims will potentially result in a loss of \$3 million annually to the school districts. These financial losses will hinder the schools ability to offer quality Medicaid-related educational support programs, which will cause a subsequent negative impact upon the health and treatment of students. In addition, these losses will have to be recouped from other school programs and services, causing a decrease in quality or potential elimination of those programs as well.

CMS has determined that “if the average annual impact on small entities is 3 to 5 percent or more, it is to be considered significant.” CMS also determines that the impact on local school districts as a result of the proposed rule would not exceed the threshold as “significant” economic impact, and that “this proposed rule will not have a significant impact on a substantial number of small entities.”

SC Appleseed disagrees with this assessment beginning with the threshold definition of “significant impact.”

CMS defines “small” governmental jurisdictions as those having a population of less than fifty thousand. Under this definition, nearly every school district in South Carolina qualifies as a “small entity.” In 2004, only two out of eighty-five school districts in the state enrolled over 50,000 students. The vast majority enrolled between 1,000 and 20,000 students. Most of these districts are rural with a high percentage of students (54.1% in the 2004-2005 school year) receiving free or reduced priced lunches¹ 55% of South Carolina’s children receive Medicaid and nearly every school district in the state has special needs students enrolled that require transportation in their IEP to reach their school and Medicaid-covered services. Schools that are poor, rural, isolated, and small (which in South Carolina happen to also have substantial minority populations), will be disproportionately impacted due to existing budget constraints and extremely limited resources. Parents that choose to send their special needs students to small, community-based schools will also be indirectly penalized for their mere choice of educational environment, as any small school with special needs students will have to cope with this additional financial burden.

The rural schools face even more difficulties and all are forced to meet the state and federal proficiency requirements with less and less funding. Any negative financial impact at all is considered significant under the already-stressed budgetary constraints faced by South Carolina public schools. The surrounding communities, especially in the more rural areas, are often in financial crisis as well. Every Medicaid dollar spent in South Carolina has a multiplier effect by creating good jobs and generating tax revenue that benefits the community. Therefore, a significantly negative economic impact upon a substantial number of South Carolina schools and communities is not only likely, but inevitable, with continuing consequences.

Contrary to the proposed rule’s Secretarial finding, school-based administrative activities including outreach, referral, and coordination of services, serve to identify and enroll eligible students in the services they need to receive the education to which they are legally entitled and are indeed necessary for the proper and efficient administration of the state plan. Moreover, transportation from home to school and back for school-age children receiving Medicaid services is both necessary and required for the proper and efficient administration of the state plan. Services such as Occupational Therapy, Physical Therapy, and Speech-Language Pathology may often be provided at the school during regular school hours, and specialized transportation to the school is necessary for a

¹ Food Research and Action Center, Southeast Regional Profile Report 2006.

special needs student to even begin to acquire the full benefit of these services and programs.

Because of the relatively small size of the school districts and their dependency on these reimbursed funds, and the significant negative effect that the loss of these funds would have on a substantial number of schools to provide services to their special needs students, SC Appleseed opposes proposed rule CMS-2287-P and strongly urges the agency to consider other more focused methods in combating alleged billing fraud and misuse.

Susan J. Rose
Staff Attorney, South Carolina Appleseed Legal Justice Center
srose@scjustice.org

Submitter : Ms. Sharron Saunders

Date: 11/06/2007

Organization : Norfolk Public Schools

Category : Physical Therapist

Issue Areas/Comments

GENERAL

GENERAL

The proposed CMS rules to eliminate the transportation and administrative claiming for schools and early childhood providers under Medicaid are both misguided and contrary to legal precedent. Thus, I urge the Secretary of Health and Human Services to withdraw the proposed rule.

Submitter : Mrs. Cathi Stallings
Organization : Ventura Unified School District
Category : Individual

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

MAA is a good program in getting information for our students and families. I feel this program has helped many families at our school. Students need insurance, parents need information and this has helped.

Submitter : Jennifer Ludwig

Date: 11/06/2007

Organization : Jennifer Ludwig

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

see attachment

#1031

FILE:///ELECTRONIC%20COMMENTS/ELECTRONIC%20COMMENTS/E-Comments/Active%20Files/Missing%20file1.txt

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE AND MEDICAID SERVICES
OFFICE OF STRATEGIC OPERATIONS & REGULATORY AFFAIRS

Please note: We did not receive the attachment that was cited in this comment. We are not able to receive attachments that have been prepared in excel or zip files. Also, the commenter must click the yellow "Attach File" button to forward the attachment.

Please direct your questions or comments to 1 800 743-3951.

Submitter : Joy Wilson
Organization : National Conference of State Legislatures
Category : State Government

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2287-P-1032-Attach-1.PDF



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

November 6, 2007

Kerry Weems, Acting Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue, S.W., Room 445-G
Washington, D.C. 20201

Donna D. Stone
State Representative
Delaware
President, NCSL

Sharon A. Crouch Steidel
Director, Information Systems
Virginia House of Delegates
Staff Chair, NCSL

William T. Pound
Executive Director

Re: (CMS-2287-P) Proposed Rule---Medicaid Program; Elimination of Reimbursement Under Medicaid for School Administration Expenditures and Costs Related to Transportation of School-Age Children Between Home and School

Dear Mr. Weems:

I am taking this opportunity, on behalf of the National Conference of State Legislatures (NCSL), to express our concerns regarding the proposed rule, published in the *Federal Register* on September 7, 2007, that would eliminate federal reimbursement under Medicaid for certain school administration expenditures and for costs related to transportation of school-age children between home and school. We firmly believe that, if these proposed rules become final, they will severely undermine successful state efforts to enroll children who are eligible, but not enrolled in Medicaid and the State Children's Health Insurance Program (SCHIP) and will curtail the delivery of critical Medicaid services to services to some very vulnerable children.

Medicaid and Schools: Administrative Activities Performed by School Employees or Contractors

The proposed rule notes that in previous guidance from the Centers for Medicare and Medicaid Services (CMS), first in 1997 and later in 2003, Medicaid reimbursement for administrative costs associated with school-based Medicaid services were authorized. The proposed rule also references two hearings held by the Senate Finance Committee in 1999 and in 2000. NCSL was part of a larger group of interested parties that met with CMS staff on the development of the 2003 guidance, the Medicaid Administrative Claiming Guide, that was designed to address the concerns expressed by both CMS and Congress. There is no evidence provided in the proposed rule to suggest that the 2003 guidance was inadequate. School-based staff are essential partners in state efforts to get enrollment information to the families of eligible children and to ensure that eligible children receive services available to them in the school setting. State Medicaid agencies do not have sufficient staff to deploy to the hundreds of school districts in their states. If there are deficiencies in administrative procedures in the schools, they should be addressed.

Transportation from Home to School and Back

NCSL urges you to reconsider the elimination of reimbursement for transportation from home to school and back or, at a minimum, establish an appeals process to allow families that may have special circumstances to make their case.

Finally, it is our hope that you will either withdraw this proposed rule or make major modifications to make certain that states in partnership with their local school districts can continue to provide access to health care services to low-income children without incurring unnecessary additional costs. I thank you for the opportunity to share the views of the nation's state lawmakers and look forward to working with you on this and other issues of mutual interest.

Sincerely,

Carl Tubbesing
Deputy Executive Director

Denver
7700 East First Place
Denver, Colorado 80230
Phone 303.364.7700 Fax 303.364.7800

Washington
444 North Capitol Street, N.W. Suite 515
Washington, D.C. 20001
Phone 202.624.5400 Fax 202.737.1069

Website www.ncsl.org

Submitter : Ms. JoAnn Hayden
Organization : Humboldt Unified School District
Category : Academic

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

We strongly oppose the implementation of this rule change. Schools have become an important and cost effective provider of essential health services for disabled children. These children are transported to school on specialized vehicles and the loss of this funding would severely impact our school district and our ability to provide services to our disabled students. We also provide important outreach services to our families. This cut would not only impact our funding but also the services to our children.

Thank you for your consideration.
JoAnn Hayden,
Yavapai County Cross-Grades Teacher of the Year

Submitter : Mr. David Griffith

Date: 11/06/2007

Organization : National Association of State Boards of Education

Category : Other Association

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2287-P-1034-Attach-1.PDF



November 6, 2007

Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention: CMS-2287-P
Mail Stop S3-14-22
7500 Security Boulevard
Baltimore, MD 21244

Dear Centers for Medicare and Medicaid Services:

On behalf of the National Association of State Boards of Education (NASBE), representing our nation's state and territorial boards of education, I am submitting the following comments regarding the proposed rule to CFR 42 Parts 431, 433, 400—file code CMS-2287-P—pertaining to the elimination of reimbursement under Medicaid for school administration expenditures and costs related to transportation of school-age children between home and school.

We strongly oppose the proposed rule because of the impact it will have in reducing the availability and access to health care for students needing these services and on the extraordinary new financial costs it will impose upon states and school districts.

The proposed rule is a significant revision of long-standing Medicaid regulations, policies, and guidance. It also appears to contradict the Medicare Catastrophic Coverage Act of 1988 (P.L. 100-360) which allows school districts to receive Medicaid payments for health services delivered to Medicaid-eligible children with disabilities and administrative costs related to school-based services.

The proposed rule seeks to reinterpret existing statutes and seems have been drafted not to improve, increase, or make more efficient health services to children, but for the sole intent to avoid reimbursing school districts for their appropriate expenditures in serving the medical needs of their students.

We also believe the cost benefit analysis of the impact of this rule, particularly the "significant economic impact on a substantial number of small entities," is flawed. The proposed regulation states that only "some school districts have total populations below this threshold [50,000] and are therefore considered small entities for purposes of the RFA, CMS has determined the impact on local school districts as a result of the proposed rule would not exceed the threshold of 'significant' economic impact under the RFA."

Moreover, the proposed rule aggregates all federal spending on elementary and secondary education as a means to minimize the rule's financial impact on school districts. Taken together, the two disparate calculations—school district populations and national K-12 school revenues—do support CMS's argument. However, this analysis presumes that most school districts are uniform in size, which they most assuredly are not. Indeed, using CMS's own methodology, one could similarly calculate that based on the total U.S. population of 281,421,906 per the most recent census and the Digest of Education Statistic's report of 14,205 school districts in the most recent school year available (2004), the average school district population is under 20,000 people and thus all qualify as "small entities."

Finally, the federal government's inability to provide forty percent of the average per pupil expenditure for students with disabilities under the Individuals with Disabilities Education Act (IDEA) is well documented. The current federal share is eighteen percent and recent IDEA state grant appropriations have actually decreased in successive fiscal years. Given the historic and continual federal underfunding of expenses incurred by schools in this area, we strongly encourage a reconsideration of the proposed rule, which would result in a loss of \$3.6 billion over the next five years, in light of these financial realities.

Thank you for your consideration of our comments. If you have any questions pertaining to our position, please contact me at 703-684-4000.

Sincerely,

A handwritten signature in black ink that reads "David Griffith". The signature is written in a cursive, somewhat stylized font.

David Griffith
Director of Governmental and Public Affairs

Submitter : Mrs. Wendy Shelton
Organization : Santa Barbara Countyt Education Office
Category : Other Government

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

To Whom It May Concern:

I am writing to oppose CMS Rule 2287-P. It is extremely important that we maintain school-based Medicaid administrative claiming. Schools are critical gateways to health care for students and families. School based administrative claiming facilitates the distribution of Medicaid information and services to otherwise neglected portions of our population. Schools have a unique role and an inherent trust relationship with students and families. This connection is irreplaceable. Schools facilitate Medicaid goals economically since they make use of existing staff and their relationships with students and families.

In addition, our office serves over 2000 students with special education needs. The promise of funding for special education services from our government has never been met. School-based Medicaid funding allows us to reach out to ensure that these students get the medical services to which they are entitled.

Education is not the only role that schools play in a child s life. Children walk through school doors without housing, food, or health care. Legislators know this and have emphasized schools as one-stop shop for education, health and social services.

Medicaid administrative reimbursement is an investment that pays substantial social and economic dividends. Before CMS cuts funding to school districts for school based administrative claiming, it should reconsider the unique role played by schools in providing medical access and specialized services to our students and families.

Thank you for your consideration.

Submitter :

Date: 11/06/2007

Organization :

Category : Other

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

Submitter : Mrs. Sheri Schoenwald
Organization : Ventura Unified School District
Category : Other Practitioner

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

I urge you to continue this reimbursement program. Having this program has provided the needed information about the medical services that could be available to uninsured families and children. It allows school district personnel, who have significant contact with children and families, to help them access needed medical, dental and mental health services. Healthy children are better able to learn and become productive members of society.

Submitter : Robert Watt
Organization : Coast Healthy Start
Category : Individual

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

The reimbursements have allowed the Coast Healthy Start Program to continue to function for the families of Coast Unified School District. The funds provide needed funding for many needy families. Without these funds the families will not have the support they need to overcome the barriers that often come with low income and lack of formal education. The funds help provide access to a Family Advocate who eliminates the barriers to educational success.

Submitter : Mrs. Alberta Longacre

Date: 11/06/2007

Organization : Mesa Public Schools

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

Please keep the transportation and administrative reimbursements in the School Based Medicaid Program. I a school administrator in special education and we rely on these funds to provide quality related services so that students may experience FAPE (Free appropriate public education).

Submitter : Mrs. Alice McCormick
Organization : Prince Edward County Public Schools
Category : Academic

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

School divisions should continue to receive reimbursement under Medicaid for School Administration Expenditures and Costs related to transportation of school-age children between home and school.

School divisions support students in need of medicaid services by providing transportation to and from home for children to access the services on school grounds.

School divisions should be reimbursed for administrative costs associated with providing medicaid services to children.

Please DO NOT eliminate this section.

Thank you.

Submitter : Dr. Renee Jenkins

Date: 11/06/2007

Organization : American Academy of Pediatrics

Category : Health Care Professional or Association

Issue Areas/Comments

GENERAL

GENERAL

Attached, please find the comments of the American Academy of Pediatrics.

CMS-2287-P-1041-Attach-1.PDF

American Academy of Pediatrics

DEDICATED TO THE HEALTH OF ALL CHILDREN™



AAP Headquarters

141 Northwest Point Blvd
Elk Grove Village, IL 60007-1098
Phone: 847/434-4000
Fax: 847/434-8000
E-mail: kidsdocs@aap.org
www.aap.org

Reply to

Department of Federal Affairs
Homer Building, Suite 400 N
601 13th St NW
Washington, DC 20005
Phone: 202/347-8600
Fax: 202/393-6137
E-mail: kids1st@aap.org

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Berkeley, CA

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John S. Curran, MD, FAAP
Tampa, FL

November 6, 2007

Centers for Medicare and Medicaid Services
Department of Health and Human Services
ATTN: CMS-2287-P, Mail Stop S3-14-22
7500 Security Boulevard
Baltimore, MD 21244

RE: CMS-2287-P Medicaid Program; Elimination of Reimbursement Under Medicaid for School Administration Expenditures and Costs Related to Transportation of School-Age Children between Home and School

To Whom It May Concern:

On behalf of the 60,000 primary care pediatricians, pediatric medical subspecialists, and pediatric surgical specialists of the American Academy of Pediatrics who are dedicated to the health, safety and well being of infants, children, adolescents and young adults, I write to express our concern regarding the above-referenced proposed rule and urge the Centers for Medicare and Medicaid Services (CMS) to delay any implementation of the rule until the impact on children with special health care needs receiving such Medicaid services can be fully understood.

CMS has proposed the elimination of reimbursement for school-based administrative services and certain transportation costs to and from school for children with disabilities. Consequently, CMS estimates a reduction of federal Medicaid expenditures of \$635 million in the first year and \$3.6 billion over the first five years. Eliminating such expenditures would inevitably shift the costs for these needed services to individual school districts and individual early childhood care providers. State and local resources are limited and as a result schools and local service providers for children face the potential of drastic service cuts.

Children with special health care needs require a continuum of services in order attend school, access health care services and maximize their potential. Integration of their health care in a medical home and health-related services at school with appropriate transportation is essential to creating this continuum of care. CMS reimbursement is a necessary part of this continuum as well. Elimination of this federal role without a comprehensive assessment of the impact on our nation's most vulnerable children puts them at unnecessary risk. We urge CMS to delay implementation of the proposed rule and begin a study of its consequences beyond cost savings.

We thank you for your consideration and look forward to working with you to meet the health needs of our nation's children.

Sincerely,

Renée R. Jenkins, MD, FAAP
President

Submitter : Mr. Greg Staley

Date: 11/06/2007

Organization : Humboldt Unified School District

Category : Other Technician

Issue Areas/Comments

GENERAL

GENERAL

We strongly oppose the implementation of this rule change. Schools have become an important and cost effective provider of essential health services for disabled children. These children are transported to school on specialized vehicles and the loss of this funding would severely impact our school district and our ability to provide services to our disabled students. We also provide important outreach services to our families. This cut would not only impact our funding but also the services to our children.

Submitter : Ms. Deborah Ziegler
Organization : Council for Exceptional Children
Category : Other Association

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

See attachment.

CMS-2287-P-1043-Attach-1.DOC

CMS-2287-P-1043-Attach-2.DOC



November 6, 2007

Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
Attention: CMS-2287-P
P.O. Box 8018
Baltimore, MD 21244-8018

RE: Comments Relative to the Proposed Regulations for School-Based Transportation and Administrative Claiming Under Medicaid

Dear Sir(s) or Madam(s):

The Council for Exceptional Children (CEC) is the largest professional organization of teachers, administrators, parents, and others concerned with the education of children with disabilities, gifts and talents, or both. CEC is writing in response to the September 7, 2007 *Federal Register* announcement requesting public comment on the Notice for Proposed Rule Making for the elimination of school administration expenditures and transportation for Medicaid-eligible children who receive services under Part B and Part C of the Individuals with Disabilities Education Act.

Introduction

CEC is gravely concerned about the devastating impact that the proposed Centers for Medicare and Medicaid Services (CMS) regulations for the elimination of reimbursements for transportation and administrative claiming under Medicaid will have on the welfare of children with disabilities. The elimination of these reimbursements would inevitably shift the financial responsibility for these claims to individual school districts and early childhood providers across the nation. The Administration estimates that the elimination of these reimbursements will provide a savings of \$635 million in the first year and \$3.6 billion over the next five years. However, there is no corresponding increase in funding for the federal special education law, the Individuals with Disabilities Education Act (IDEA), that will enable schools and early childhood providers to make up for the reduction in Medicaid reimbursements to schools and early childhood providers.

In addition, less than half of all school districts claim reimbursement for Medicaid administration activities. This means that the financial impact is weighted disproportionately for those school districts that do submit claims for reimbursement. On the other hand, the estimated savings will have a miniscule impact on the overall federal budget because it makes up merely 0.2 percent of the entire federal budget. Also, Medicaid reimbursement for special education services is set forth in the *Medicare Catastrophic Coverage Act of 1988*, which allows Medicaid to be the primary payer for Medicaid services for Medicaid-eligible students with disabilities.

Major Issues and Concerns

CEC has major issues with the proposed rule to eliminate the Medicaid reimbursement for transportation and administrative claiming. We believe it is flawed and should be withdrawn. We recognize that the proposed rule, in some cases, seeks to address legitimate policy issues. However, according to the background for the proposed regulations, “school-based administrative activities do not meet the statutory test under section 1903(a)(7) of being ‘necessary...for the proper and efficient administration of the State plan.’” CEC strongly disagrees with this statement. The provision of transportation services and administrative claiming under Medicaid are indeed necessary for carrying out state Medicaid plans. Many medically provided services under Medicaid are provided at the school and early childhood settings where Medicaid-eligible children attend, whether or not those services are provided by employees of the state or the local Medicaid agency. This is particularly relevant because the background to the proposed regulations also states that, “CMS recognizes that schools are valid settings for the delivery of Medicaid services”, yet the proposed rules would still not recognize the need for transportation to and from school for Medicaid-eligible children who take advantage of these services at school and early childhood settings.

In addition, the proposed regulations state that they were drafted, “Due to inconsistent application of Medicaid requirements by schools to the types of administrative activities conducted in the school setting...” However, the studies that conclude that the misfeasance conducted by some schools in claiming Medicaid reimbursements only took into account an insignificant number of schools. CMS should rightly impose sanctions on those schools and early childhood providers that improperly or illegally misrepresent claims for Medicaid reimbursement; punishing every school and early childhood provider nationwide is not the proper course of action to take in this instance.

As we stated in our comments on the proposed rules to eliminate the rehab option, we welcome the opportunity to work in partnership with the Congress and the Administration to achieve consensus on appropriate policies and procedures to ensure that Medicaid beneficiaries receive the highest quality services, consistent with Title XIX of the Social Security Act, and to ensure that states operate their Medicaid programs to achieve the best outcomes and in the most publicly accountable manner. CEC believes that this proposed rule prevents a necessary dialogue between federal officials, state Medicaid officials, other state officials (including individuals responsible for programs for people with developmental disabilities and child welfare), service providers, and representatives of affected Medicaid populations. We are not aware of any meaningful effort by the Secretary of HHS or CMS to work with affected stakeholders to address current policy concerns. Indeed, we have been troubled by dubious enforcement actions and audits by the HHS Office of the Inspector General (OIG) that have appeared more focused on limiting federal expenditures than improving the appropriateness or effective administration of services under Medicaid.

Legal Basis for Providing Transportation and Administrative Claiming

The proposed CMS regulations to eliminate Medicaid transportation and administrative claiming contradict current law. There is firm legal standing for the allowable use of Medicaid claiming for transportation and administration.

First, Section 1903(c) of the Title XIX of the Social Security Act states that “nothing in this title shall be construed as prohibiting or restricting, or authorizing the Secretary to prohibit or restrict, payment under subsection (a) for medical assistance for covered services furnished to a child with a disability because such services are included in the child's individualized education program established pursuant to part B of the Individuals with Disabilities Education Act or furnished to an infant or toddler with a disability because such services are included in the child's individualized family service plan adopted pursuant to part C of such Act.” Clearly the proposed regulations would be in direct conflict with this provision of law and would not further the purposes of Title XIX of the Social Security Act.

Second, school-based claiming was protected in the courts in the 1987 *Bowen* case, when the appellate court ruled that school-based Medicaid claims were reimbursable, and the Supreme Court elected to let that decision stand by denying cert. Since the Bowen decision, CMS has provided guidance to states and school districts on Medicaid-based claiming just twice, in 1999 and 2003. CMS has an obligation to states and schools to provide guidance on how to effectively and accurately make claims for reimbursement.

Third, the proposed rules would not comply with Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services. Under current law, states must provide EPSDT services to all children who are eligible for the Medicaid program. This is one of the mandates that states must meet in order to operate a Medicaid program. Through EPSDT, Medicaid-eligible children must be seen periodically by health care professionals. In 1989 the law was amended to mandate that states provide any necessary Medicaid service that a child requires regardless of whether the state specifically covers the service as part of its regular Medicaid program. A state cannot restrict the services that it provides under the EPSDT mandate; it must make all types of services available, including the services children with disabilities require.

Fourth, under the Medicare Catastrophic Coverage Act of 1988, states are permitted to obtain limited funds for Individualized Education Program-related services and for early intervention/family support services as defined in the individualized family service plan (IFSP). The proposed regulations would deny legally allowable claims to provide services under IEPs and IFSPs.

Finally, the proposed rules would go beyond the regulatory scope and power of the Executive Branch and is inconsistent with Medicaid law. To the extent that policy changes are needed, we believe that the legislative process is the appropriate arena for addressing these issues. In fact, in 1999 and 2000, the Senate Finance Committee held hearings on CMS claiming, and concluded that there needed to be greater oversight on administration of claims from schools, not how the claiming process worked.

Federal Cost Shifting and Reduced Levels of Service

The proposed rules for the elimination of the Medicaid transportation and administrative claiming will be a huge financial hit to already cash-strapped schools and early childhood providers. The federal government has not even provided half of the promised funds for the IDEA, and denying schools and early childhood providers in this country an additional \$635 million will only make a bad situation worse. This in turn will shift the financial burden to state and local governments to pay a greater share for required services under IEPs and IFSPs, and the frequency and/or intensity of those services may be reduced.

Conclusion

The proposed CMS rules to eliminate the transportation and administrative claiming for schools and early childhood providers under Medicaid are both misguided and contrary to existing legal precedent. For the reasons stated here, we urge the Secretary of Health and Human Services to withdraw the proposed rule.

Thank you for allowing the public to provide comments on the Notice for Proposed Rule Making for the elimination of school administration expenditures and transportation for school-age children under the Medicaid program, and thank you for considering CEC's comments and recommendations. If you need additional information please contact Deborah Ziegler, Associate Executive Director for Policy and Advocacy Services at debz@cec.sped.org or 703-264-9406, or Dan Blair, Senior Director for Policy and Advocacy Services at danb@cec.sped.org or 703-264-9403.

Sincerely,



Deborah A. Ziegler, Ed.D
Associate Executive Director
Policy and Advocacy Services

Submitter : Mrs. Connie Phillips
Organization : Washington County
Category : Academic

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

I would like to express my concerns regarding the proposed elimination of reimbursement under Medicaid for School Administration Expenditures and costs related to transportation of school-age children between home and school. School systems utilize these monies to help cover costs that benefit students. Monies are allocated for personnel, including school nurses, instructional materials, equipment for clinics and other service providers, etc. These monies have provided opportunities for school divisions financially that may not otherwise be available within local, state, and federal budgets.