

Submitter : Dr. Paul McKendrick
Organization : Lynchburg City Schools
Category : Local Government

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2287-P-1045-Attach-1.DOC

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 2124

Re: Public Comment Rule 2287-P

Dear Sir or Madame:

This letter provides the opportunity for Lynchburg City Schools to express concerns about Rule 2287-P. This rule proposes cuts to Medicaid reimbursements for school-based services. The Centers for Medicare and Medicaid Services (CMS) proposes to eliminate reimbursement, under Medicaid, for school administration expenditures and costs related to the transportation of school-age children between home and school. Lynchburg City Schools is adamantly opposed to this proposal. Elimination of funding for services because of inappropriate claiming practices by some providers is not the solution. Centers for Medicare & Medicaid Services' continued collaboration with the Medicaid agency puts them in a better position to establish regulations to ensure proper claiming and support the key role schools play in identifying Medicaid-eligible children, promoting access to Medicaid services, and arranging or delivering needed care. CMS has provided Virginia and subsequently our school division with the necessary guidance to ensure appropriate claiming for school-based Medicaid administrative activities. Federal financial participation in the costs of outreach, informing, and care coordination is available to all public entities performing such activities on behalf of the Medicaid program. Cutting funding for these activities in the school setting is not sound fiscal or social policy. Lynchburg City Schools has been participating successfully in Administrative Claiming for several years. Since the onset of Administrative Claiming in Lynchburg City Schools, children have benefited from services made available through these funds. Changes in Administrative Claiming will result in our school division having to shift funds from other areas in our budget to cover the costs if this proposal becomes a reality.

The Medicare Catastrophic Coverage Act of 1988 expressly allows Medicaid to reimburse school districts for state plan covered services, including transportation that schools provide pursuant to the Individualized Education Programs of Medicaid-eligible children with disabilities. A rule to prohibit schools from claiming administrative and transportation expenses would contradict existing law. Schools and communities across the United States are highly invested in helping children achieve their fullest potential. We urge the Centers for Medicare and Medicaid Services to continue investing federal matching funds in efficient and effective school based Medicaid administrative activities and state plan-covered transportation services.

Sincerely,

Paul McKendrick, Ed. D.
Superintendent of Schools
Lynchburg City Schools

Submitter : Annette Jewell

Date: 11/06/2007

Organization : Annette Jewell

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

I am writing to strongly oppose finalization of CMS-2287-P.

After working with School-Based Medicaid administration for the past eight (8) years, I was stunned to learn the Centers for Medicare and Medicaid Services (CMS) had proposed elimination of the program.

Our local work is guided by our public agencies' stated missions, and I wondered whether the CMS proposal could reflect its mission statement. I discovered the CMS Strategic Action Plan posted on the CMS website. I read the Executive Summary, and I've included excerpts below.

CMS Strategic Action Plan 2006-2009

" CMS Mission: To ensure effective, up-to-date health care coverage and to promote quality care for beneficiaries.

" One of the five CMS Strategic Action Plan Objectives is Collaborative Partnerships. Statements for that objective include the following.

o The success of CMS depends on collaborative relationships with a variety of organizations, individuals and institutions.

o We will also continue to develop health and grassroots networks for Medicare and Medicaid, and establish ties with quality alliances and local communities to support getting better health care.

Certainly CMS stands to lose much more than it would gain from implementing the proposed rule. The agency would lose the established network of local school-based Medicaid partners with proven success in reaching some of America's most vulnerable students and their families.

An incalculable number of eligible students would lose access to the effective health care coverage and quality care that CMS is responsible to ensure.

Submitter : Mr. Thomas Potterton
Organization : Hayward Community Schools
Category : Academic

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

The loss of the transportation funding would cost the Hayward Community School's \$20,000.00. These funds are used to provide appropriate seating for the students who generate these dollars. We think it is unfair not to fund the same thing that you would fund if the child went to a hospital or other facility. By us providing the service in school the child does lose time from school. The reimbursement we get does come close to covering the costs of getting these to and from home to receive their required service. The loss of these dollars will take money away from the other students because these services are mandated. This is why we feel that this funding should continue.

Submitter : donna bley
Organization : petaluma city schools
Category : Nurse

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

Today many children do not have a medical home, a yearly physical, a familiar doctor. Children come to school to learn but have so many health problems that have never been taken care of, that they are hindered from learning. We really need to continue to help parents give their children healthcare. Nurses at schools take care of doing this and I want to make sure you do not cut off financial support for this endeavor. Thank you.

Submitter : Margi Tays

Date: 11/06/2007

Organization : HUSD

Category : Speech-Language Therapist

Issue Areas/Comments

GENERAL

GENERAL

Please don't stop funding transportation for special education students. Some of these students have so many problems standing in the way of them getting to school don't make it harder for them.

Submitter : Mr. Steven Kane

Date: 11/06/2007

Organization : Humboldt Unified School District 22

Category : Occupational Therapist

Issue Areas/Comments

GENERAL

GENERAL

As I am starting to really understand, 'NO CHILD LEFT BEHIND' apparently means 'FEND FOR YOURSELF'. As one who works within the school system and particularly with Special Needs students, I am appalled at the continued assault upon our education system. Learning for tests, is not learning. Specifically, we in Special Ed. count on the services that you are intending to cut. Think about it again please, as you sip on your martinis.

Submitter : Mr. David Brewer

Date: 11/06/2007

Organization : Los Angeles Unified School District

Category : Academic

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

#1051

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 : Mr. Todd Tyner

Date: 11/06/2007

Organization : Ventura Unified School District

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

The MAA program is the catalyst that made our employees aware and proactive to tell parents about Medical coverage and has ultimately been a tremendous advantage to our students, community and district.

Submitter : Mr. Steve Mishlove
Organization : AZ. Dept. of Education/Exceptional Student Service
Category : State Government

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

We are without question totally opposed to this proposed rule change. Our public education agencies provide valuable outreach services for our students including information on Medicaid eligibility and services. They also provide vital and cost effective care coordination for our students with disabilities. As well, our schools have become an essential and cost-effective provider of necessary health services for students with disabilities. Many students with severe disabilities are transported to school in buses or vans with special equipment and/or staffing to meet their needs. The loss of this funding would significantly impact our schools and their ability to provide services to families and the students with disabilities.

Submitter : Mr. Linwood Carlson

Date: 11/06/2007

Organization : Seattle Public Schools

Category : Other Government

Issue Areas/Comments

GENERAL

GENERAL

To Whom It May Concern,

The Centers for Medicare and Medicaid Services published a proposed rule (CMS-2287-P) in the Federal Register on September 7, 2007, that would prohibit local schools from claiming federal reimbursement for school-based Medicaid administrative activities. CMS fails to recognize that schools play a key role in identifying children eligible for Medicaid and connecting them to needed services.

During the 2006-07 school year, Seattle Public Schools Family Support Workers served over 3,787 families of elementary age children. Their efforts provide an important safety net of support to our families and children. Eighty-one percent of the students served by Family Support Workers were eligible for the Free/Reduced Lunch Program. Many of these families are experiencing health, financial, and other challenges that can interfere with student academic achievement. Family Support Workers provide the critical services of identifying children eligible for Medicaid and connecting them to needed services. Last year these valuable activities generated over \$300,000 in Medicaid Administrative Match funds.

Family Support Workers help individual families get access to medical, dental and vision services:

? They help parents find medical assistance for students glasses, physicals, immunizations and dental exams/treatments/sealants.

? They help arrange appointments, find interpreters, and transportation to facilitate parent/student access to health care.

? They work with school nurses and counselors to coordinate positive physical, dental and mental health care plans.

Family Support Workers perform Medicaid Outreach:

? At Family Night and Family Orientation activities, FSWs provide/coordinate Medicaid Coverage information to families including information about what Medicaid covers and how to access Medicaid services.

? During interactions with families, FSWs assist families to apply for Medicaid including helping them complete the application process or help them troubleshoot problems that the families are having regarding losing/re-starting their Medicaid Coupons.

I request that this rule change be tabled and reconsidered. School staff have responsibly provided these necessary activities and I see no evidence from the Centers for Medicare and Medicaid Services why this should be changed.

I look forward to hearing from you on this serious issue for our children.

Linwood Carlson
Manager of School Support
Seattle Public Schools
Mail Stop 31-523
PO Box 34165
Seattle, WA 98124-1165

206-252-0854
lcarlson@scattleschools.org

Submitter : Mr. Arnie Duncan
Organization : Chicago Public Schools
Category : Local Government

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

"See attachment"

#1055

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

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

Submitter : Ms. Valerie Wyatt

Date: 11/06/2007

Organization : Ventura Unified School District

Category : Academic

Issue Areas/Comments

GENERAL

GENERAL

The MAA program has been the catalyst that made our district employees aware and proactive in telling our parents about Medical coverage. Too many of our families in our district do not have insurance coverage for their families because many of them do not work, are not full time employees, work in the service industry for minimum wage and hours, etc. MAA has provided us with the information, opportunity and reason to provide our families with this much needed resource. I hope that you will continue to lobby for this program.

Submitter : Ms. Rhonda Gordon

Date: 11/06/2007

Organization : CEC

Category : Academic

Issue Areas/Comments

GENERAL

GENERAL

See attachment

CMS-2287-P-1057-Attach-1.DOC

CMS-2287-P-1057-Attach-2.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 : Ms. angela knox
Organization : HUSD
Category : Individual

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

I oppose the Elimination of Reimbursement under Medicaid for School Administration Expenditures and Costs Related to Transportation of School-Age Children between Home and School.

Submitter : Mrs. Mamie Warren

Date: 11/06/2007

Organization : Hollandale School District

Category : Nurse

Issue Areas/Comments

GENERAL

GENERAL

As Health Services Coordinator for the Hollandale School District, we ask that CMS not eliminate reimbursement under the Medicaid Program for costs of school-based administrative and transportation services. These services are an essential part of health related services in our school district. We firmly disagree with the proposed CMS rule.

Submitter : Mrs. Karen Sanford
Organization : Norfolk Public Schools
Category : Speech-Language Therapist

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2287-P-1060-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.

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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.

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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

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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. Robert Nagy

Date: 11/06/2007

Organization : Mr. Robert Nagy

Category : Individual

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 in small vans with special equipment and/or special staffing to meet their needs. The loss of this funding would severely impact our school district and our ability to provide services to all of our children.

Our district provides important outreach services for all of our children, providing information on Medicaid eligibility and services. We also provide essential and cost-effective care coordination for our children with severe disabilities. This cut would impact not only our funding but also services to our families.

Submitter : Mrs. Jennifer Nagy

Date: 11/06/2007

Organization : Mrs. Jennifer Nagy

Category : Individual

Issue Areas/Comments

GENERAL

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Submitter : Ms. Jennifer Walters
Organization : Escondido Union School District
Category : Academic

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

See attachment

CMS-2287-P-1063-Attach-1.TXT

November 5, 2007

Dear Secretary Leavitt:

Subject: Stopping the Implementation of CMS-2287-P

As Superintendent of Schools for the Escondido Union School District, located in the northern region of San Diego County, California, I am writing to urge you to stop the implementation of CMS-2287-P.

The Escondido Union School District has a majority of its student population who are English learners and/or from low socio-economic households. Many of these families are recent arrivals to the United States and are in great need of health services that they cannot otherwise afford.

Our district earned \$429,394 through the California School-Based Medi-cal Administrative Activities (SMAA) program during the 2004-05 fiscal year, the most recent year claimed. That revenue enabled our district to identify children to receive Medi-cal benefits and connect them to appropriate health services in our community.

Loss of the SMAA revenue would substantially reduce our ability to obtain much-needed healthcare for our students and to hire staff needed to identify and refer those students most in need of health screenings as well as a variety of necessary health services.

Under No Child Left Behind, our district has been labeled as a low-performing district based on the scores of our subgroups—English learners being one of two subgroups. It is essential to our efforts to bring these students to grade-level proficiency that they are healthy and ready to learn. These students face many challenges to their success in our schools, and having their healthcare needs met has made a significant difference in their reaching proficiency.

Thank you for anything you can do to stop the implementation of CMS-2287-P.

Sincerely,

Jennifer Walters
Superintendent of Schools

Submitter : Rose Mattson
Organization : District 112
Category : Academic

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

See attachment

CMS-2287-P-1064-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.

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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 : Ms. Dianne Knotts
Organization : Willits Unified School District
Category : Speech-Language Therapist

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

MAA reimbursement funds in our school district is critical to the support of many of our medically fragile student aged three to twenty two. It has been used to supplement the medical needs such as speech therapy , occupational therapy and psychological services. With the rising number of children with autism we have been able to buy materials to help them with communication it is very expensive to develop programs that work such as Teaach and PECs. The need for psychological assessments and mental health counseling is ever increasing (with no help from the "no child left behind" program) Now that the administrators and special education teachers have learned how to get reimbursement for the medical outreach and coordination they are mandated to provide, it seems absurd to even think of cutting this funding.

The MAA program is very well designed and has helped to raise awareness of the medical needs our children have and how we can help them to become healthy learners.

Submitter : Ms. Sharon Rodgers
Organization : Seattle Council PTSA (Seattle, WA)
Category : Other Association

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

Last year Seattle Public Schools Family Support Workers served over 3,000 families of elementary school students. These school-based support workers create a critical safety net in our schools, especially for students whose families face significant financial, health and other challenges.

I am concerned about proposed rule (CMS-2287-P) that would prohibit local schools from claiming federal reimbursement for school-based Medicaid administrative activities. Because many of these families do not have other support, our school support workers are often the only professionals who come in contact with these students and can identify those eligible for Medicaid and connect them to needed services.

These are critical services and prohibiting the federal reimbursement for these administrative activities may mean extreme disruption for our students. I respectfully request that this rule be tabled and reconsidered: I see no evidence that explains why the current practice should be changed.

Sincerely,

Sharon Rodgers
President
Seattle Council of PTSA
PO Box 24483
Seattle, WA 98124
(206) 841-0830

The Seattle Council PTSA represents 75 PTAs in the Seattle School District with over 13,000 members. Our mission is to promote the health and well-being of all children.

Submitter : Barbara Fitzgerald
Organization : Ventura Unified School District
Category : Other Government

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

As a School Board Trustee and a former Director of County Human Services, I can say with some certainty that the services provided through MAA are essential to the well being of our students and to our community. It would indeed be a mistake to once again close off a legitimate avenue of funding for these activities. I would hope that our representatives care about their constituents health and well being and are not just putting up road blocks to adequately fund services. I urge you to be respectful of the local governments and allow this source of funding to continue. Thank you.

Submitter : Mr. Will Gordillo
Organization : Miami-Dade County Public Schools
Category : Academic

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2287-P-1068-Attach-1.DOC

Miami-Dade County Public Schools
Comments Opposing Rule 2287-P, submitted November 6, 2007

Miami-Dade County Public Schools (M-DCPS) strongly opposes the recently published Rule 2287-P by the Centers for Medicare and Medicaid Services (CMS). CMS 2287-P will eliminate reimbursement under Medicaid for school administration expenditures, based on Department of Health and Human Services (DHHS) Secretary Leavitt's determination that "such activities are only necessary for the proper and efficient administration of the [Medicaid] State plan when conducted by employees of the State or local Medicaid agency", and costs related to transportation of Medicaid-eligible school-age children who receive services under the Individuals with Disabilities Education Act (IDEA) Part B or Part C between home and school.

We recognize that CMS has the arduous task of addressing overpayments due to inappropriate filing of administrative claims by some states, however, penalizing the nation's school districts by terminating funding for the same activities CMS admits are best performed in local educational settings is not deemed the most appropriate consequence. Rather than ceasing reimbursements for nationwide local educational agencies (LEAs), CMS should provide guidance to school districts in accurate claiming practices. Furthermore, for those school districts that are identified for inappropriate claims submissions, CMS should practice fair disciplinary actions without eradicating this much needed funding source for our students with disabilities.

As the fourth largest school district in our nation, Miami-Dade County Public Schools has approximately 341,000 students enrolled, of which approximately 43,000 are students with disabilities under IDEA, Part B or Part C. Furthermore, our Medicaid-eligible students with disabilities consist of approximately 20,000 out of the 43,000. As an eligible Medicaid provider under the School Districts Administrative Claiming (SDAC) program and the Florida Medicaid Certified School Match Program, M-DCPS benefits substantially from the reimbursements to provide districtwide support for inclusion services, supplies, computer hardware/software and salaried employees to sustain our programs for students with disabilities. Our SDAC reimbursement revenues totaled approximately \$11.7 million last fiscal year 2006-2007, and the reimbursement revenues from the Florida Medicaid Certified School Match Program totaled approximately \$1.5 million during that same fiscal year, of which approximately \$200,000 encompassed transportation revenues.

The elimination of reimbursements for administrative claiming and transportation would severely impact the welfare of our students with disabilities. Moreover, it would limit the ability for our school settings to provide the opportunities to help families enroll their children in Medicaid and to ensure that Medicaid-eligible children receive all necessary health care services through our school-based programs or in our community-based settings. The provision of transportation services and administrative claiming under Medicaid are undeniably necessary for carrying out state Medicaid plans. The financial responsibility for these claims in light of the absent reimbursements would dramatically shift to school districts and early childhood providers nationwide. It is estimated by the Administration that the elimination of these reimbursements will provide a substantial amount of savings of \$635 million in the first year and \$3.6 billion over the next five years. Nevertheless, there is no parallel increase in funding for IDEA, the federal special education law, which would enable schools and early childhood providers to make up for the significantly reduced Medicaid reimbursements to these entities.

Miami-Dade County Public Schools respectfully requests CMS to withdraw the proposed rule, CMS 2287-P, which will eliminate reimbursements to schools for Medicaid administrative activities and transportation costs.

Submitter : Mrs. Kris Christiansen

Date: 11/06/2007

Organization : Washoe County School District, Reno, Nevada

Category : Academic

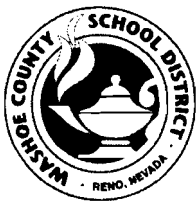
Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2287-P-1069-Attach-1.DOC



Special Education Services
380 Edison Way (89502)
P.O. Box 30425
Reno, NV 89520-3425
(775) 857-3161

Washoe County School District

Kris Christiansen – Assistant Superintendent
Special Education and Related Services

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):

As the Director of Special Education for the 63rd largest school district in the nation, 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.

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.

I am extremely concerned that this proposed rule to eliminate the Medicaid reimbursement for transportation and administrative claiming will adversely affect our children. 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.

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.

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.

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.

Sincerely,

Kris Christiansen
Assistant Superintendent – Special Education and Related Services

Submitter : Ms. Susana Garcia
Organization : Nipomo Family Resource Center
Category : Other Practitioner

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

I work for a school-based collaborative with many school and community partners. On a daily basis we see students and work with the school and county mental health professionals to ensure the good health and well-being of students. Through our family resource and counseling program students are receiving the family resources such as food and clothing that they need. They are attending school and able to learn more because they are not hungry and cold. They also can receive mental health services on the school campus if needed. In collaboration with the Lucia Mar Unified School District we are able to provide effective, high quality health and mental health programs on a daily basis. Medicaid Administrative Claiming (MAC) has been instrumental in supporting these services in our district. On a daily basis MAC affects students and their families and provides needed resources to promote educational success and improved overall health and well-being of students and their families. In California our MAC program is Medi-Cal Administrative Activities MAA which directly benefits the health of students in the district. MAA reimbursement dollars support various programs and numerous services for students and families to ensure student attendance and academic success. Our Family Resource Center, previously Healthy Start programs, would not be able to provide so many services if funding for this program was cut. Our Family Resource Centers provide free resources to all community members, health counseling and referrals, counseling for students and families, parenting classes and substance abuse prevention materials, nutrition education, financial aid for basic needs and services, translation services, and prevention programs for students. There has been noted improvement in health, well-being, and academic success of students in our district funded with MAA dollars. Without MAA reimbursement dollars our district students would not be able to have the health and counseling services they now benefit from. This funding for student support services is instrumental in supporting student academic success and overall well-being of children and families. Our first priority are our student-our future leaders- and MAA reimbursement monies are a necessity for meeting their academic as well as health, safety and social needs. Please continue the MAA funding of our future-our youth.

Submitter : Mrs. Patty Bitsilly

Date: 11/06/2007

Organization : Deer Valley Unified School District

Category : Academic

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 in small vans with special equipment and/or special staffing to meet their needs. The loss of this funding would severely impact our school district and our ability to provide services to all of our children.

Our district provides important outreach services for all of our children, providing information on Medicaid eligibility and services. We also provide essential and cost-effective care coordination for our children with severe disabilities. This cut would impact not only our funding but also services to our families.

Submitter : Mrs. Sandra Clark
Organization : Humboldt Unified School District
Category : Individual

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.

Submitter : Mrs. Linda Nietupski
Organization : Humboldt Unified School Dist.
Category : Local Government

Date: 11/06/2007

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 in a detrimental manner.

Submitter : Janice Griffis

Date: 11/06/2007

Organization : CEC

Category : Academic

Issue Areas/Comments

GENERAL

GENERAL

This government needs to be responsible for the transportation costs for our special needs population. Our schools cannot and should not carry the financial burden. So step up to the plate and take care of your business. Stop paying all of our hard earned tax dollars for the WAR IN IRAQ! Do something for your own people in need.

Submitter : Steve Rish
Organization : Steve Rish
Category : Individual

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2287-P-1075-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.

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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.

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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 : Cheryl Blackwell
Organization : Arizona Department of Education
Category : State Government

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 students with disabilities. These children are transported to school in small vans with special equipment/or special staffing to meet their needs. The loss of this funding would severely impact our state's ability to provide services to all of our children.

Our state provides important outreach services for all of our children, providing information on Medicaid eligibility and services. We also provide essential and cost-effective care coordination for our children with severe disabilities. This cut would impact not only our funding but also services to our families. With so many of America's families (husband and wife and single parent, etc.) working, it is impossible for them to transport their child to school. Ultimately this rule change would hurt families and the children who have the most difficulty in getting to school because of transportation issues and who need to be in school the most!

Submitter : Mr. Grant Oshiro
Organization : CEC
Category : Academic

Date: 11/07/2007

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2287-P-1077-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 : Mrs. Shelley Forrest
Organization : San Mateo County Office of Education
Category : Speech-Language Therapist

Date: 11/07/2007

Issue Areas/Comments

GENERAL

GENERAL

Please do not discontinue medicaid reimbursements to school districts. We, SLPs are providing a medicaid service and the districts should be reimbursed for this. In our county, educational providers receive a portion of the funds which go directly to students.