

Submitter : Dr. Mark Masterson
Organization : Maynard Public Schools
Category : Local Government

Date: 10/31/2007

Issue Areas/Comments

GENERAL

GENERAL

We serve a number of poor children. Do not further reduce our ability to provide services to all.

Submitter : Dr. Jennifer Olson
Organization : Oregon Department of Education
Category : State Government

Date: 10/31/2007

Issue Areas/Comments

GENERAL

GENERAL

Secretary Leavitt:

The Oregon Department of Education is strongly opposed to the CMS proposed rule 2287-P which would eliminate reimbursement of funds obtained through Medicaid Administrative Claiming and restrict transportation services for children with disabilities for school districts and Education Service Districts.

Proposed rule 2287-P makes it difficult for the state to comply with Early Periodic Screening, Diagnosis, and Treatment (EPSDT) requirements under federal law. The Medicare Catastrophic Coverage Act of 1988 prohibits the U.S. secretary of Health and Human Services from denying Medicaid reimbursement for Medicaid covered services provided to a child with a disability solely because the services are part of the child's Individualized Education Plan (IEP) or Individualized Family Service Plan (IFSP). Rule 2287-P weakens Federal Law 42 U.S.C. 1396b(a)(7). Currently, schools claim 50% federal financial participation in their costs for administrative outreach, informing and service coordination activities for children and their families. Under 2287-P, schools could not be the essential partners that help the state Medicaid agency fulfill its EPSDT requirements. Additionally, the rule's elimination of federal financial participation for transportation to and from school when the child receives a service at school under the Individuals with Disabilities Education Act (IDEA) is inconsistent with 42 U.S.C 1396b (a) (7).

The effect of rule 2287-P would reduce funds schools have utilized in support of health and social services provided to children and their families, expansion of access to services, and the purchase of items to ensure children's health and safety.

CMS rule 2287-P contends that Medicaid staff, rather than educational staff, may properly perform Medicaid administrative activities. Oregon disagrees with this argument. Under Oregon's State Plan Amendment, Health services in education are provided in the following areas:

- " Audiology Services (Audiologist)
- " Speech Therapy (Speech Therapist)
- " Occupational Therapy (Occupational Therapist)
- " Social Worker Services (Licensed Clinical Social Worker)
- " Psychological Services (Psychologist)
- " Transportation

Because the above health services are provided in an educational setting to children eligible under the IDEA, education agencies and/or school districts employ skilled, certified personnel and special education staff who are knowledgeable in recognizing signs and symptoms of characteristics of suspected disabilities and are familiar with the process for referring children to appropriate resources for early detection and diagnosis of a condition.

Therefore, school-based administrative claiming activities provided by staff employed by and under the control of an education agency is consistent with the proper and efficient administration of the State plan. School staff participate in outreach in close proximity to the targeted population, bringing Medicaid-eligible children into preventative and follow up care in support of EPSDT, designed to improve the health of low-income children

The Education of All Handicapped Children Act of 1975 (now IDEA 2004) has historically provided limited federal funding for the education of students with disabilities. Rule 2287-P would be detrimental to the provision of Free and Appropriate Public Education (FAPE) for IDEA by shifting additional costs of Medicaid covered health services to the state. Adoption of the proposed rule would strain the provision of all education services by requiring the state to allocate more scarce state resources to the education budget to provide mandated IDEA services. Schools cannot afford to provide the level of federally mandated administrative services in support of the Medicaid program without adequate federal reimbursement of their costs.

Under the proposed rule, funding remains available for covered services in a child's IEP or IFSP and for t

CMS-2287-P-462-Attach-1.DOC

**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**

To Secretary Leavitt:

The Oregon Department of Education is strongly opposed to the CMS' proposed rule 2287-P which would eliminate reimbursement of funds obtained through Medicaid Administrative Claiming and restrict transportation services for children with disabilities for school districts and Education Service Districts.

Proposed rule 2287-P makes it difficult for the state to comply with Early Periodic Screening, Diagnosis, and Treatment (EPSDT) requirements under federal law. The Medicare Catastrophic Coverage Act of 1988 prohibits the U.S. secretary of Health and Human Services from denying Medicaid reimbursement for Medicaid covered services provided to a child with a disability solely because the services are part of the child's Individualized Education Plan (IEP) or Individualized Family Service Plan (IFSP). Rule 2287-P weakens Federal Law 42 U.S.C. 1396b(a)(7). Currently, schools claim 50% federal financial participation in their costs for administrative outreach, informing and service coordination activities for children and their families. Under 2287-P, schools could not be the essential partners that help the state Medicaid agency fulfill its EPSDT requirements. Additionally, the rule's elimination of federal financial participation for transportation to and from school when the child receives a service at school under the Individuals with Disabilities Education Act (IDEA) is inconsistent with 42 U.S.C 1396b (a) (7).

The effect of rule 2287-P would reduce funds schools have utilized in support of health and social services provided to children and their families, expansion of access to services, and the purchase of items to ensure children's health and safety.

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- Occupational Therapy (Occupational Therapist)
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shifting additional costs of Medicaid covered health services to the state. Adoption of the proposed rule would strain the provision of all education services by requiring the state to allocate more scarce state resources to the education budget to provide mandated IDEA services. Schools cannot afford to provide the level of federally mandated administrative services in support of the Medicaid program without adequate federal reimbursement of their costs.

Under the proposed rule, funding remains available for “covered services in a child’s IEP or IFSP and for transportation from school to a health care provider in the community for a covered service.” Disallowing a child to receive medical and health services within the educational setting or specialized transportation from home to school to receive these services in the educational setting could negatively impact FAPE for children with disabilities. Children and families will be required to leave school to access some services which are presently available at school. Such disruption of the school day and logistics for working parents serve no benefits to the students.

Parents of children who are eligible for services under IDEA often depend on schools as a source of information and as coordinators of community resources for their children. Removing Medicaid outreach efforts from the schools removes an efficient, existing resource for parents to be proactive in assisting their children grow and develop in good health. Parents would be forced to find new and less reliable means to learn about and access services to which their children are entitled.

The Oregon Department of Education requires program providers under contract for Early Intervention and Early Childhood Special Education (EI/ECSE) services to submit data on their Medicaid revenues for each year. This information is collected to meet reporting requirements for the Oregon Legislature. The failure to collect Medicaid revenues for EI/ECSE puts at risk our chances to secure additional funding for these services. EI services are not required under federal law, but are currently required under state statute. It could be said that the diminishing of any revenue source for EI places this mandate at higher risk as well.

Oregon is fiscally conscientious in the use of the funds available through any source for children’s health, education and well-being. Elimination of Medicaid reimbursement will only serve to make services less accessible to families, increase already overloaded caseloads for all providers of services, and most importantly impact services to all children by reducing funding for and access to educational, medical, and health resources.

Jennifer J. Olson
Director, Early Childhood Services
Oregon Department of Education
255 Capitol St. NE
Salem, OR 97310-0203

503-947-5662
503-378-5156 (fax)
jennifer.olson@state.or.us

Submitter : Mrs. Maria I. Vargas
Organization : Alvord Unified School District
Category : Academic

Date: 10/31/2007

Issue Areas/Comments

GENERAL

GENERAL

Dear Sirs,

As an Interpreter/Translator in my district I encounter families with needs that go far beyond the educational realm. Recently, I assisted a family with a child whose medical needs superexceeded the 'norm.' This family was blessed with a son diagnosed with multiple physical disabilities. Mom came to me looking for only the basic information, however because of my involvement with our nurse department and because I was able to reach a nurse directly, I was able to supply her with additional needed information. Information that helped in placing him in an appropriate setting and provided him with the additional assistance of a nursing staff at his school. Our district, I understand, applies the funds received (by our department) from the MAA program to supplant our nurse's assistants and upgrade any needed medical equipment that aids in diagnosing hearing and vision problems. Without these additional monies we would be limited in the type of help we could offer our students, their families, and our nursing staff would have more time constraints. I attribute this case's success in finding the necessary help, services and medical assistance directly to staff availability. Consequently, our staff's availability is directly dependent on the MAA program.

Submitter : Ms. Linda Williamson
Organization : Altmar Parish Williamstown Central School District
Category : Academic

Date: 10/31/2007

Issue Areas/Comments

GENERAL

GENERAL

SEE ATTACHMENT

DATE: October 31, 2007 RE: CMS-2287-P

TO: Secretary Michael Leavitt,
Center for Medicare & Medicaid Services,
Dept. of Health and Human Services

FROM: Linda Williamson, Legislative Liaison
APW Central School District,
639 County Rte 22, Parish, NY 13131

Regarding the proposed change in regulations and resulting reduction of funds for reimbursement to schools for administrative and transportation related expense for disabled students, and on behalf of APW CSD students and families we would like to make the following objections:

1. Regarding your assertion that this is a measure to eliminate waste and fraud, we believe that the solution to this problem is not to eliminate funding for services that are critical to students with disabilities, but rather to provide effective oversight as a means to curtail improper or illegal practices. Punishing all for the sins of a few is unfair.
2. We take particular offense to the statement, In the end, we ultimately rejected these alternatives because the intervening years have proven that such activities cannot be adequately regulated or overseen. We believe that oversight is a critical function that should not be tossed aside, and request that you reconsider that decision.
3. For many years now our public schools have seen a significant increase in the number of students who are in need of special services. Cutting this funding will directly impact our ability to identify students in need of services earlier rather than later. As you know early identification is an extremely cost effective measure. Students with special needs who are not identified early end up costing the system more in the long run.
4. As a rural school district with a geographic area that covers approximately 180 square miles, any reduction of funding for transportation services would create a hardship that would be felt by all of our students. We would still have to provide services to our students with disabilities, and if funds are cut it is very likely that in turn we would have to shuffle services. In other words we would probably have to cut other services, maintaining only what is absolutely mandated. That would be a step backward.
5. Finally, our school district is located in Upstate New York, an area which has been economically depressed for quite some time now. Almost half of our students qualify for free or reduced price lunch. Many of our population are either unemployed or underemployed. Although there are plans by NYS to remedy this nothing changes quickly, and there is little likelihood that the local economy will change any time soon. Cuts to funding result in added expense to our taxpayers who are already shouldering the financial burden for federally mandated services in a system that is shamefully under funded.

Submitter : Ms. Tracy Maloy

Date: 10/31/2007

Organization : Raytown C-2 School District

Category : Academic

Issue Areas/Comments

GENERAL

GENERAL

The SDAC program in the Raytown School District provides mental health services to hundreds of students on a daily basis. It would be detrimental to our students if the program ceased to provide funding to school districts.

Submitter : Ms. Cynthia Ustrud
Organization : Kelseyville Unified School District
Category : Health Care Provider/Association

Date: 10/31/2007

Issue Areas/Comments

GENERAL

GENERAL

Federal Medicaid dollars provide significant support for school health programs, both in terms of service delivery and planning and outreach. Some of the students receiving these services have no other source of health care or assistance with obtaining medical treatment. Many are children with special needs. Schools are ideally situated to provide a wide range of health services and health outreach activities for children linking them to government Medicaid programs.

School-based health programs serve hundreds of children. These programs are vital for the health of these children and for the success of our schools, because healthy children learn better. They also provide the federal government with the ability to leverage its Medicaid dollars, as the state matches some of the federal support. Moreover, all of this is accomplished with relatively little Federal Medicaid support. School-based health programs amount to less than one percent of the total federal Medicaid budget.

Our children, their parents, and my professional colleagues and I thank you for your support of health care programs in our schools with the continued funding of Medi-cal Administrative Activities Program (MAA) and the LEA Medi-cal program.

Sincerely,

Cindy Ustrud
Student Support Services Director
Kelseyville Unified School District

Submitter : Mrs. Ann Peacher
Organization : Raytown High School
Category : Individual

Date: 10/31/2007

Issue Areas/Comments

GENERAL

GENERAL

As a Special Services teacher, I can't tell you how invaluable our interventionists, funded through the medicaid program, are to our school. Without them, the classroom teacher would be expected to deal with all the insurmountable problems our students are bringing with them to school. With the help of interventionists, we are able to get these students the counseling they require. We are also able to carry on our classroom lessons without having to stop and deal with a student needing individual assistance with a problem or behavior that often occurs outside of the classroom.

Submitter :

Date: 10/31/2007

Organization :

Category : Speech-Language Therapist

Issue Areas/Comments

GENERAL

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The SDAC program in the Raytown School District provides mental health services to hundreds of students on a daily basis. It would be detrimental to our students if the program ceased to provide funding to school districts.

Submitter :

Date: 10/31/2007

Organization :

Category : Academic

Issue Areas/Comments

GENERAL

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Submitter : Amy CUSUMANO

Date: 10/31/2007

Organization : Raytown School

Category : Academic

Issue Areas/Comments

GENERAL

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Submitter : Bennet Upper
Organization : Methow Valley School District
Category : Local Government

Date: 10/31/2007

Issue Areas/Comments

GENERAL

GENERAL

I agree that Administrative Match should be discontinued for schools. At least in our district, we are seeing little or no impact in terms of signing up additional students for health care. It seems more like an empty exercise that uses up class teaching time and generates minimal benefit.

Submitter :

Date: 10/31/2007

Organization :

Category : Academic

Issue Areas/Comments

GENERAL

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Submitter : Ms. June Cohen
Organization : Maryland State Department of Education
Category : State Government

Date: 10/31/2007

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2287-P-473-Attach-1.WPD

Department of Health and Human Services
Centers for Medicare & Medicaid Services
Office of Strategic Operations & Regulatory Affairs

The attachment cited in this document is not included because of one of the following:

- The submitter made an error when attaching the document. (We note that the commenter must click the yellow "Attach File" button to forward the attachment.)
- The attachment was received but the document attached was improperly formatted or in provided in a format that we are unable to accept. (We are not are not able to receive attachments that have been prepared in excel or zip files).
- The document provided was a password-protected file and CMS was given read-only access.

Please direct any questions or comments regarding this attachment to
(800) 743-3951.

Submitter : Ms. Jennifer Taylor
Organization : Raytown c-2 School District
Category : Academic

Date: 10/31/2007

Issue Areas/Comments

GENERAL

GENERAL

The SDAC program in the Raytown School District provides mental health services to hundreds of students on a daily basis. In seeing these students throughout the day, I believe it would be highly detrimental to their education and to their futures outside of school if this program ceased to provide funding to districts.

Submitter :

Date: 10/31/2007

Organization :

Category : Health Care Provider/Association

Issue Areas/Comments

GENERAL

GENERAL

The SDAC program in the Raytown School District provides mental health services to hundreds of students on a daily basis. It would be detrimental to our students if the program ceased to provide funding to school districts.

Submitter : Mrs. Nancy Shaw
Organization : Raytown C2 School District
Category : Academic

Date: 10/31/2007

Issue Areas/Comments

GENERAL

GENERAL

The SDAC program in the Raytown School District provides mental health services to hundreds of students on a daily basis. It would be detrimental to our students if the program ceased to provide funding to school districts.

Submitter :

Date: 10/31/2007

Organization :

Category : Academic

Issue Areas/Comments

GENERAL

GENERAL

To lose the SDAC program for the Raytown School District may mean our kids that are considered homeless, living in motels, shelters etc. and other students that are on free and reduced lunch may no longer be able to get the help they need and rightly deserve. Who will help then then?

Submitter : Ms. Chris Bilant
Organization : Kalispell, Montana Public Schools
Category : Academic

Date: 10/31/2007

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

478

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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 : Mrs. Rachael Swanson
Organization : Raytown C2 School District
Category : Other Health Care Professional

Date: 10/31/2007

Issue Areas/Comments

GENERAL

GENERAL

The SDAC program in the Raytown School District provides mental health services to hundreds of students on a daily basis. It would be detrimental to our students if the program ceased to provide funding to school districts.

Submitter : Ms. Judi Baker
Organization : Petaluma City Schools District
Category : Nurse

Date: 10/31/2007

Issue Areas/Comments

GENERAL

GENERAL

As a school nurse I know that supporting any efforts to provide regular attendance for a student will have long term benefits for the student and society as a whole. Recent studies have shown that even absenteeism in kindergarten is predictive of future failure in school. So,if providing paid services through the school district helps the student meet the goal of regular attendance, it does not make sense to curtail these efforts. Please do not eliminate reimbursement under Medicaid for these expenditures.

Submitter : Mrs. Nina Bloecher
Organization : Raytown Quality Schools
Category : Nursing Aide

Date: 10/31/2007

Issue Areas/Comments

GENERAL

GENERAL

I work at the clinic in a high school; and we have about 1400 students here. Since we have had Medicaid Reimbursement for Mental Health Services our building is so much better. My job has been relieved because the students have a safe place to go and people that are trained to help them get through a rough spot. I appreciate the much needed help that SDAC gives our school district.

Submitter : Mrs. aimee newberry
Organization : raytown C-2 school district
Category : Academic

Date: 10/31/2007

Issue Areas/Comments

GENERAL

GENERAL

it is wonderful to be able to provide so many services with the funding that is received to help support the numerous services for special needs and at risk studnets in our district

Submitter : Tracey Dobusch

Date: 10/31/2007

Organization : Kelseyville USD

Category : Speech-Language Therapist

Issue Areas/Comments

GENERAL

GENERAL

Please DO NOT eliminate Medicaid reimbursement for schools. All children, especially ones with special needs, will suffer.

Submitter : Ms. Angela Bowles
Organization : Kelseyville Unified
Category : Academic

Date: 10/31/2007

Issue Areas/Comments

GENERAL

GENERAL

Please continue to fund out schools!

Submitter : Ms. Debbie Tone-Pah-Hote
Organization : RAytown C-2 Schools
Category : Health Care Provider/Association

Date: 10/31/2007

Issue Areas/Comments

GENERAL

GENERAL

The SDAC program in the Raytown School District provides mental health services to hundreds of students on a daily basis. It would be detrimental to our students if the program ceased to provide funding to school districts.

Submitter : Ms. Kasey Daniel
Organization : New Mexico Center on Law and Poverty
Category : Attorney/Law Firm

Date: 10/31/2007

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2287-P-486-Attach-1.DOC

NM center on law and poverty

October 31, 2007

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

SENT ELECTRONICALLY

Re: Comments in Response to the Centers for Medicare & Medicaid Services Proposed Rulemaking on the Elimination of Reimbursement Under Medicaid for School Administration Expenditures and Costs related to Transportation of School-Age Children Between Home and School (CMS-2287-P).

The New Mexico Center on Law and Poverty writes in opposition to the proposed rule CMS-2287-P (hereafter "proposed rule"), which would prohibit federal reimbursement for school administration expenditures undertaken by school personnel, including reimbursement for Medicaid outreach and enrollment activities.

As of 2005, it is estimated that 57,194 New Mexico children (11%) are uninsured. Eighty-two percent of these uninsured children are eligible, but not enrolled in Medicaid or the State Children's Health Insurance Program.¹ The Medicare Catastrophic Coverage Act of 1988 (P.L. 100-360, hereafter "the MCCA") allows schools to claim reimbursement for the administrative costs of providing school-based Medicaid services such as outreach for enrollment purposes, and coordination and/or monitoring of medical care. By prohibiting federal reimbursement for these very services, the proposed rule is contradictory to current federal law. Moreover, Title XIX Section 1903 (c) of the Social Security Act forbids the Secretary of Health & Human Services to deny reimbursement for claims related to eligible services for children and students with disabilities. In addition, school-based claiming was legally protected in the 1987 *Bowen* case, when the appellate court ruled that school-based claims were reimbursable, and the Supreme Court elected to let that decision stand. The Centers for Medicare and Medicaid Services itself recognized the value of Medicaid services provided in the schools: "the school setting provides a unique opportunity to enroll eligible children in the Medicaid program, and to assist children who are already enrolled in Medicaid to access the benefits available to them."²

¹ New Mexico Medicaid Facts, available at http://www.aap.org/advocacy/washing/elections/mfs_nm.pdf.

² Centers for Medicare and Medicaid Services, Medicaid School-based Administrative Claiming Guide (2003). Available at <http://www.cms.hhs.gov/MedicaidBudgetExpendSystem/Downloads/Schoolhealthsvcs.pdf>.

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www.nmpoertylaw.org • Phone: (505) 255-2840 • Fax: (505) 255-2778

The Albuquerque Public Schools (APS) is an example of an effective school-based program which is involved in outreach for enrollment purposes reimbursable under the MCCA.³ The proposed rule would essentially defund the APS program. The APS program, which consists of two full-time and one part-time outreach workers and a resource nurse, enrolled over 1500 children in Medicaid in the 2006-07 school year. This program is effective in providing help with the Medicaid application process to those poor families who would likely find it difficult, if not impossible, to go through the process themselves. As the Center on Budget Policy Priorities put it, "(s)chool-based outreach and enrollment activities are successful precisely *because* they use school staff who are trusted by families and are already in the schools and in contact with children and families."⁴

The reasoning underlying the proposed rule is flawed in that it results in the finding that enrollment activities conducted by school employees are not necessary for the proper and efficient administration of the Medicaid State Plan. However, the proposed rule finds the exact same activities "necessary" if performed by employees of the state or local Medicaid agency. For a decade, Medicaid outreach and the facilitation of Medicaid eligibility determinations have been considered allowable Medicaid school-based administrative activities⁵. Under the proposed rule, the APS program described above, which enrolled more than 1500 children in Medicaid in one school year, would not be considered necessary for the proper and efficient administration of the State Medicaid plan. Clearly children enrolled in Medicaid by a school employee, rather than a state Medicaid employee, are no less enrolled.

If the problem is that states are billing improperly, CMS should provide training, monitoring, and auditing to ensure proper billing policies are followed rather than eliminate the program. The proposed rule will do away with many programs that support Medicaid in an effort to disallow those administrative activities that do not.

According to the National School Boards Association (NSBA), the proposed rule change would reduce the availability of and access to needed health and developmental services for students with Individual Education Plans (IEPs) and other low-income children, for whom school is their primary site for healthcare delivery. Schools rely on these reimbursements for a variety of purposes such 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.

³ J. Solomon and D. Cohen Ross, Administration Moves to Eviscerate Efforts to Enroll Uninsured Low-Income Children in Health Coverage Through the Schools (2007) available at <http://www.cbpp.org/9-17-07health.htm>.

⁴ *Id.*

⁵ Centers for Medicare and Medicaid Services. (1997). August 1997 technical assistance guide on Medicaid and school health. Available at <http://www.cms.hhs.gov/MedicaidBudgetExpendSystem/Downloads/Schoolhealthsvcs.pdf>.

The loss of these resources could mean that schools have to lay off nurses and social workers, curtail their referral services, and/or scale back enhancements for school buses. Furthermore, 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 school districts. As a result, this proposed rule change is likely to impact regular education students as well through cuts to electives, after school activities, arts and music programs, and/or reductions in teachers and support positions.

For the above reasons, the New Mexico Center on Law and Poverty urges the U.S. Department of Health and Human Services to reconsider implementation of the proposed rule.

Sincerely,

/s/

Kasey R. Daniel, Esq.

Submitter : Ms. Rene Haines

Date: 10/31/2007

Organization : Raytown School District

Category : Speech-Language Therapist

Issue Areas/Comments

GENERAL

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The SDAC program in the Raytown School District provides mental health services to hundreds of students on a daily basis. It would be detrimental to our students if the program ceased to provide funding to school districts.

Submitter : Arun Prem
Organization : Access Services Inc.
Category : Other

Date: 10/31/2007

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2287-P-488-Attach-1.DOC



November 1, 2007

Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attn: CMS-2287-P
Post Office Box 8017
Baltimore, Maryland 21244-8017

RE: Comments to Docket Number CMS-2287-P

Administrator McClellan:

On behalf of 44 cities and transportation authorities in Los Angeles County, I write to provide comment on the Centers for Medicare and Medicaid Services' (CMS) Notice of Proposed Rulemaking (NPRM) concerning Elimination of Reimbursement Under Medicaid for School Administration Expenditures and Costs Related to Transportation of School-Age Children Between Home and School, published September 7, 2007, at 72 FR 51397.

About Access Services, Inc.

Access Services is a state mandated local governmental agency created in 1992 by 44 of Los Angeles County's public transit agencies to:

- Administer and manage the **delivery of regional Americans with Disabilities Act paratransit service** (ACCESS PARATRANSIT), and
- Coordinate human service agency transportation as the **Consolidated Transportation Services Agency (CTSA)**. California State Law requires the designation of an agency as CTSA in each region, to ensure a clearinghouse for transportation coordination resources and opportunities.

Access Services is a "governmental" agency within the meanings of the California Fair Political Practices Act and the California Open Meetings and Records Act (Brown Act).

This Proposed Rule Would Effectively Transfer the Costs of Transporting Children to Local Public Transportation Agencies

The result of this proposed rule is inescapable – the \$3.6 billion dollars cited in the NPRM would amount to a \$3.6 billion burden on state and local authorities. Public transportation agencies, already overtaxed by the most extensive ridership in 50 years would find themselves responsible for unreimbursed expenses of transporting thousands of students in complementary paratransit services designed for persons whose disabilities limit them from using fixed route transit services.

Taken together with CMS' August 24, 2007 proposal to severely limit reimbursement for non-emergency medical transportation services provided by public transportation agencies (Notice of Proposed Rulemaking, Non-Emergency Medical Transportation, 72 FR 48604, docket number CMS-2234-P, this amounts to a major abdication of CMS responsibility and an unprecedented shift of financial burdens from CMS to state and local authorities and their public transportation agencies. We feel that CMS' analysis under the *Unfunded Mandates Reform Act* and otherwise is flawed. To conclude that local government *always* had the responsibility to pay these massive costs but that CMS has somehow provided funding over the years is inaccurate. This NPRM represents an unfunded mandate and violates the *Unfunded Mandates Reform Act*.

In attempting to provide reduce federal outlays, the proposed rule would damage the availability of transportation services to the seniors and persons with disabilities most reliant on those services. This insufficiently explored impact on state and local governments is an additional reason this proposed rule should be withdrawn in favor of additional study and coordination.

We also recommend that the proposals in the NPRM should be referred to the United We Ride committee for review.

We greatly appreciate the opportunity to assist CMS in coordinating human services based transportation services and stand ready to provide information, research, or other assistance necessary in fully exploring the consequences of proposed strategies. For additional information, please contact Arun Prem of my staff at (213) 270-6082 or prem@asila.org.

Sincerely yours,

Shelly Lyons Verrinder
Executive Director
Access Services

Submitter : Miss. Virginia Watkins
Organization : SDAC
Category : Individual

Date: 10/31/2007

Issue Areas/Comments

GENERAL

GENERAL

Our school serves young people with various problems ranging from Mental Retardation to Emotional Disturbed. Many of our student benefit from individual counseling to assist in their behavior management and to help in appropriate development of social skills. The funding from the SDAC program provides for counselors to be available to our students, and to students with similar problems throughout our district. The discontinuation of this funding would significantly impact the services we are currently providing to our student.

Submitter : Mrs. CAROL HARDT

Date: 10/31/2007

Organization : SANTA CLARA COUNTY OFFICE OF ED

Category : Speech-Language Therapist

Issue Areas/Comments

GENERAL

GENERAL

AS A NEW EMPLOYEE FOR THE COUNTY, I SEE HOW BADLY NEEDED THESE FUNDS ARE. THEY ARE USED EXCLUSIVELY FOR THE PURPOSE INTENDED. BECAUSE OF THESE FUNDS, I AM ABLE TO PROVIDE APPROPRIATE AND COST EFFECTIVE SERVICES TO THIS POPULATION. PLEASE DO NOT ELIMINATE THESE CRITICAL FUNDS!!!

Submitter : Mr. Thomas Zelten
Organization : Winnebago County Special Education Cooperative
Category : Other Association

Date: 10/31/2007

Issue Areas/Comments

GENERAL

GENERAL

I am writing to express my disapproval for the elimination of the Medicaid Outreach Program and Reimbursement for Transportation program for schools. The schools via state and federal regulations are increasingly being asked to do more for children and families, while funding levels are either cut or decreased. The loss of revenue for school based health services would mean yet another cut in revenues forcing schools to cut services for children. If other requirements under IDEA and No Child Left Behind were funded at appropriate levels, this loss would not be as great.

The funds from Medicaid outreach and transportation program helps purchase materials and equipment for students in the schools, a loss of which would limit school districts in their continued quest for attainment of state and federaly required standards and work toward annual yearly progress.

As a director for a nine school district special education cooperative I can attest that at least in Illinois, these programs are monitored and administered with the utmost integrity. Talk of misuse or abuse is and has not been an issue in this state. I urge legislators to take a look at the current funding system for schools and compare the current percent of state and federal funding to the levels originally intended with 94-142; the result will be alarming and further demonstrate the lack of regard for the professionals in the field of education.

While it is true, the basic services would continue to be provided, but in rural districts such as ours, with per capita tuition rates 50% less than our collar county peers, the loss of revenue would further exacerbate the discrepancies. Please stop CMS from implementing the regulations which would result in a loss of revenue and service to the children in our Cooperative and the country.

Below are questions which should be asked and answers generated.

What data support the Secretary's finding that school-based administrative activities performed pursuant to interagency agreements between the states and local school districts for the purpose of meeting EPSDT requirements are not necessary for the proper and efficient administration of Medicaid?

Why is it more efficient for state officials to travel to thousands of school sites to enroll hundreds of thousands of children in Medicaid/SCHIP and to coordinate EPSDT services than for trained school-based staff who have established trusting relationships with parents and guardians to do so?

Why is it more efficient to pay for transportation from schools to stand-alone medical clinics and hospitals than to pay only the portion of the annual specialized bus routes that occurs on days when the children receive a Medicaid health service? I would delete this bullet and treat the transportation issue separately.

Does CMS's cost containment proposal amount to only a cost shift to states and/or school districts who are mandated to provide these health and care coordination services to students under IDEA? If so, how does this correlate to Bowen v. Massachusetts and the statutory language in OBRA that clarifies that Medicaid must pay for services in a Medicaid-eligible child's IEP or IFS.

2. What data support CMS's determination that transportation to school district Medicaid providers should be excluded from Medicaid reimbursement while other Medicaid providers retain reimbursement and what is the basis for this distinction?

3. What activities has CMS done to improve its oversight of school-based administrative claiming in response to the 2000 GAO Report that concluded that the problems in school districts identified in the report were a direct result of insufficient oversight by CMS?

How did the effort that states and school districts invested in establishing programs consistent with CMS guidelines and achieving approval by CMS result in the conclusion by CMS that none of these outreach and case management services were Medicaid-eligible

Submitter : Matthew Miller

Date: 10/31/2007

Organization : Matthew Miller

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

The SDAC program in the Raytown School District provides mental health services to hundreds of students on a daily basis. It would be detrimental to our students if the program ceased to provide funding to school districts.

Submitter : Mrs. Carolyn Nunes
Organization : San Diego County Office of Education
Category : Academic

Date: 10/31/2007

Issue Areas/Comments

GENERAL

GENERAL

Subject: Stop CMS-2287-P

Dear Secretary Leavitt,

As the Special Education Director for the San Diego County Office of Education, I am writing to respectfully urge you to stop implementation of CMS-2287-P. The San Diego County local education agencies earned approximately \$10.3 million through California School-Based Medi-Cal Administrative Activities (SMAA) performed during the 2004/2005 fiscal year.

Local Education Agency staff (teachers, nurses, social workers) daily see the impact of students who are in need of outreach services these funds support. Locally these funds are used to hire staff to identify students who need screenings and evaluations, hire nurses, social workers and specialized health professionals. Additionally, funds are used to outfit busses with specialized equipment for some of our most needy students.

Loss of SMAA revenue would substantially reduce our ability to continue to provide these services.

Sincerely,

Carolyn Nunes

Senior Director Special Education

San Diego County Office of Education

Submitter : Dr. Randolph Ward
Organization : San Diego County Office of Education
Category : Academic

Date: 10/31/2007

Issue Areas/Comments

GENERAL

GENERAL

Subject: Stop CMS-2287-P

Dear Secretary Leavitt:

On behalf of the San Diego County Office of Education, I am writing, to respectfully urge you to stop implementation of CMS-2287-P.

San Diego County local education agencies (LEAs) earned approximately \$10.3 million through California School-Based Medi-Cal Administrative Activities (SMAA) performed during the 2004/2005 fiscal year, the most recent year claimed. The revenue has enabled our County Office and our local districts to continue identifying children for Medi-Cal and connecting them to appropriate health services in school and in our community.

Loss of SMAA revenue would substantially reduce our ability to hire staff to identify students who need screenings and evaluations, connect students and their families with much needed health services, support our students and families through parent groups and to sustain Healthy Start centers and health clinics. These reflect only a sample of the services the County Office and the districts use to support some of our neediest students.

Respectfully,
Randolph E. Ward, Ed.D.
San Diego County Superintendent of Schools

Submitter : Dr. Stephen Walker
Organization : The Council for Exceptional Children
Category : Academic

Date: 10/31/2007

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2287-P-495-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. Heather Sims
Organization : Raytown C-2 Schools
Category : Academic

Date: 10/31/2007

Issue Areas/Comments

GENERAL

GENERAL

The SDAC program in the Raytown School District provides mental health services to hundreds of students on a daily basis. It would be detrimental to our students if the program ceased to provide funding to school districts.

Submitter : Ms. Minnie Forte-Brown
Organization : Durham Public School Board of Education
Category : Academic

Date: 11/01/2007

Issue Areas/Comments

GENERAL

GENERAL

See attachment

CMS-2287-P-497-Attach-1.PDF



Board of Education

October 22, 2007

Secretary Michael O. Leavitt
Department of Health and Human Services

Administrator Leslie V. Norwalk
Centers for Medicare and Medicaid Services

RE: CMS 2287-P

Dear Secretary Leavitt and Administrator Norwalk:

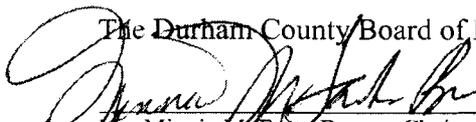
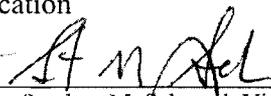
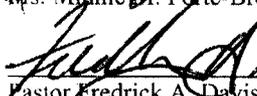
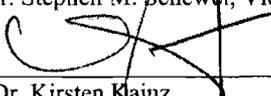
We are writing to strongly oppose the regulation proposed by the Centers for Medicare and Medicaid Services (CMS) published in the Federal Register that would eliminate school-based reimbursements now paid with Medicaid dollars (CMS 2287-P.) This rule would eliminate services provided to special needs students including medical care plans, referral and scheduling of multiple clinicians and practitioners, parent outreach to ensure that eligible children are enrolled in the Medicaid program and transportation costs to implement the program.

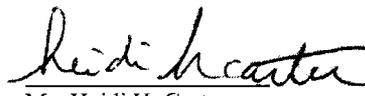
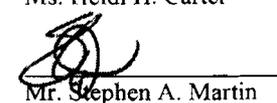
It is estimated that the proposed cuts would cost school districts around the country more than \$615 million in annual funding and \$3.5 billion over five years. In Durham County, these changes would represent a loss of \$484,000 annually and \$2.6 million over a five year period for the more than 3,600 special needs students we currently serve. If these dollars are lost, it will only exacerbate the existing deficit in state supported funding for Durham County's special needs children.

The Durham County Board of Education respectfully requests that you withdraw CMS 2287-P.

Sincerely,

The Durham County Board of Education

 Ms. Minnie M. Forte-Brown, Chair	 Mr. Stephen M. Schewel, Vice Chair
 Pastor Fredrick A. Davis	 Dr. Kirsten Kainz
 Ms. Omega Curtis Parker	

 Ms. Heidi H. Carter
 Mr. Stephen A. Martin

Submitter : Mrs. Ellen Garcia

Date: 11/01/2007

Organization : Mrs. Ellen Garcia

Category : Other Health Care Professional

Issue Areas/Comments

GENERAL

GENERAL

Many, hundreds of students benefit daily from the SDAC program. It would be devastating to the students in the Raytown School District if the program stopped providing funding to the schools.

Submitter : Ms. Minnie Forte-Brown
Organization : Durham Public Schools Board of Education
Category : Academic

Date: 11/01/2007

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2287-P-499-Attach-1.PDF



Board of Education

October 22, 2007

Secretary Michael O. Leavitt
Department of Health and Human Services

Administrator Leslie V. Norwalk
Centers for Medicare and Medicaid Services

RE: CMS 2287-P

Dear Secretary Leavitt and Administrator Norwalk:

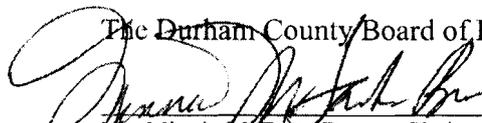
We are writing to strongly oppose the regulation proposed by the Centers for Medicare and Medicaid Services (CMS) published in the Federal Register that would eliminate school-based reimbursements now paid with Medicaid dollars (CMS 2287-P.) This rule would eliminate services provided to special needs students including medical care plans, referral and scheduling of multiple clinicians and practitioners, parent outreach to ensure that eligible children are enrolled in the Medicaid program and transportation costs to implement the program.

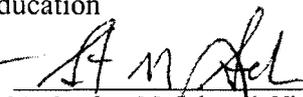
It is estimated that the proposed cuts would cost school districts around the country more than \$615 million in annual funding and \$3.5 billion over five years. In Durham County, these changes would represent a loss of \$484,000 annually and \$2.6 million over a five year period for the more than 3,600 special needs students we currently serve. If these dollars are lost, it will only exacerbate the existing deficit in state supported funding for Durham County's special needs children.

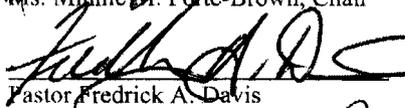
The Durham County Board of Education respectfully requests that you withdraw CMS 2287-P.

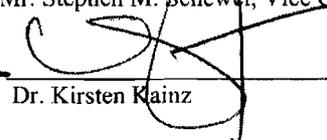
Sincerely,

The Durham County Board of Education

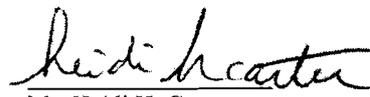

 Ms. Minnie M. Forte-Brown, Chair

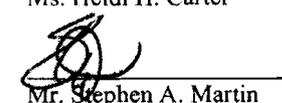

 Mr. Stephen M. Schewel, Vice Chair


 Pastor Fredrick A. Davis


 Dr. Kirsten Rainz


 Ms. Omega Curtis Parker


 Ms. Heidi H. Carter


 Mr. Stephen A. Martin

Submitter : Mr. michael griffin
Organization : moore county schools
Category : Academic

Date: 11/01/2007

Issue Areas/Comments

GENERAL

GENERAL

see attachment

CMS-2287-P-500-Attach-1.DOC

October 30, 2007

Secretary Michael O. Leavitt
Administrator Leslie V. Norwalk
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: CMS 2287-P

Dear Secretary Leavitt and Administrator Norwalk:

We are writing to strongly oppose the regulation proposed by the Centers for Medicare and Medicaid Services (CMS) published in the Federal Register that would eliminate school-based reimbursements now paid with Medicaid dollars (CMS 2287-P.) This rule would eliminate services provided to special needs students including medical care plans, referral and scheduling of multiple clinicians and practitioners, parent outreach to ensure that eligible children are enrolled in the Medicaid program and transportation costs to implement the program.

It is estimated that the proposed cuts would cost school districts around the country more than \$615 million in annual funding and \$3.5 billion over five years. *In Moore County, these changes would represent a loss of \$170,000 annually and \$850,000 over a five year period for the more than 1,500 special needs students we currently serve.* If these dollars are lost, it will only exacerbate the existing deficit in state supported funding for Moore County's special needs children.

Moore County Schools respectfully requests that you withdraw CMS 2287-P.

Respectfully,

Bruce T. Cunningham, Jr., Chairman
Moore County Board of Education

Susan R. Purser, Ed.D., Superintendent
Moore County Schools

BTC/SRP:cbm

CMS-2287-P-501

Submitter : Ernest Anastos
Organization : Lemon Grove School District
Category : Other Government

Date: 11/01/2007

Issue Areas/Comments

GENERAL

GENERAL

The Lemon Grove School District is opposed to CMS-2287-P because it would negatively impact the operations of the school district. By eliminating Medicaid reimbursement, money would need to be diverted from the general fund and classroom to compensate for the loss. We would lose funding for a variety of services and activities such as outfitting buses for specialized transportation, fulfilling No Child Left Behind requirements and hiring school nurses, social workers, and specialized health professionals.

Thank you for your consideration,
Ernie Anastos, Superintendent