

Submitter : Mrs. Elissa Waldman-Sison
Organization : Norfolk Public Schools
Category : Academic

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

see attachment

CMS-2287-P-878-Attach-1.DOC

CMS-2287-P-878-Attach-2.DOC

CMS-2287-P-878-Attach-3.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 I believe it is flawed and should be withdrawn.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. Susan HOskins

Date: 11/06/2007

Organization : Pittsylvania County Schools

Category : Academic

Issue Areas/Comments

GENERAL

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I don't understand why this should even be questioned. How are people in these positions if their trustworthiness is questionable? Of course these reimbursements should be continued. I hardly have enough time, as it is, getting everything done that my job itself requires, much less the time involved in keeping up with these tasks! Reimbursement, at least, is some compensation!

Submitter : Mrs. Fiesta Martin
Organization : Norfolk Public Schools
Category : Academic

Date: 11/06/2007

Issue Areas/Comments

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See attachment

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Submitter : Mrs. Jackie Smith-Eley

Date: 11/06/2007

Organization : Norfolk Pubkic Schools

Category : Academic

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Submitter : Mrs. Melissa Colley
Organization : Norfolk Public Schools
Category : Academic

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Organization : Norfolk Public Schools
Category : Academic

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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. Alisa Burroughs
Organization : Bullhead City School District
Category : Individual

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2287-P-884-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):

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Major Issues and Concerns

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

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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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Submitter : Mr. Charles Dyer

Date: 11/06/2007

Organization : Alma Schools

Category : Individual

Issue Areas/Comments

GENERAL

GENERAL

Regarding the elimination of reimbursement for administrative claiming, please reconsider. These funds have allowed our district to purchase much needed supplies, equipment, and services for our students with special needs. We have been stretching our dollars to the limits due to the inadequate funding toward special education from the federal level. This medicaid fund is generated in a very regulated fashion and is in no way utilized toward administrative costs incurred by the school district. All dollars go toward services for children. Please do not take these dollars away - consider these an avenue of funding that should have already been flowing to districts for the benefit of children.

Submitter : esther hierstein
Organization : norfolk public schools
Category : Speech-Language Therapist

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

See attachment

CMS-2287-P-886-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

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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 : Mrs. Janice Wiles
Organization : Pittsylvania County Schools
Category : Nurse

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

Our county placed 129/134 for Total Support/Per Pupil Expenditures in 2005-06. The money earned due to Administrative Billing has given us the tools needed to better serve our students. The funds have provided a Titmus vision tester for each of our 18 schools as well as an audiometer. Four School Nurse Coordinators have been able to become instructors for CPR and First Aid. We have realistic tools to teach staff insulin and glucagon administration. We have been able to provide continuing education opportunities for the 18 nurses that serve our schools. We have been able to purchase a web-based Healthcare Computer Program for our school nurses. This program has enabled us to better meet student's needs as the information is available wherever they move in our county (we are the largest geographical county in the state). Without these funds, none of this would have been possible. For the first time in my 12 years working for Pittsylvania County Schools, I feel I am much more effectively meeting the needs of our student body and the nurses I supervise with the materials Administrative Billing has enabled us to purchase. Please, don't take the opportunities away that are made possible by Administrative Billing. There are many using these funds appropriately. The bottom line is our students benefit making it possible for their educational experience to meet every possible need to make them successful. Thank you for the opportunity to share why these funds are so important and essential for our students.

Submitter : Katharine Carter
Organization : Norfolk Public Schools
Category : Academic

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

See attached

CMS-2287-P-888-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

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Submitter : Mrs. Carrie Touart
Organization : Pittsylvania County Schools
Category : Speech-Language Therapist
Issue Areas/Comments

Date: 11/06/2007

GENERAL

GENERAL

Reimbursement under Medicaid for school administration expenditures needs to continue. The cost for these services still exists. It is a health related service. I see no reason for the children to suffer for others' abuse of the system. Those counties where the abuse occurred should lose reimbursement, not all counties. Pittsylvania County Schools follows all of the regulations and should continue to receive reimbursement for these services.

Submitter : Mrs. Tracey Anthony
Organization : Norfolk Public Schools
Category : Speech-Language Therapist

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

see attachment

CMS-2287-P-890-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

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Submitter : Mr. Shannon Daly
Organization : Craig County Public Schools
Category : Local Government

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

Dear Sir or Madame:

I wish to express my concern for proposed changes to administrative reimbursements for school systems under Medicaid(Rule 2287-P). As a public school system, we provide the first line of intervention for many of the students served under Medicaid programs. I feel that elimination of administrative funding will significantly impact the ability to continue reaching, identifying, and assisting children in the Commonwealth. As a small school system with a limited tax base and limited fiscal resources, we derive significant benefits from the reimbursements made available. As we continue our focus on Leaving No Child Behind, I feel that it is of paramount importance to allocate every possible resource to assisting those children that are most at risk for being Left Behind. If our focus is to be on increasing the efficacy of our schools and our educational system, this decision seems to run counter to that current. I urge you to consider continued funding for administrative costs accrued in the implementation of Medicaid programs for the children of Virginia.

Sincerely,

Shannon M. Daly
Supervisor of Special Education
Craig County Public Schools
New Castle, VA

Submitter : Donna Mazyck

Date: 11/06/2007

Organization : National Association of School Nurses

Category : Health Care Professional or Association

Issue Areas/Comments

GENERAL

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See Attachment

CMS-2287-P-892-Attach-1.PDF



National Association of School Nurses

8484 Georgia Avenue
Suite 420
Silver Spring, MD 20910
240-821-1130
301-585-1791 fax

www.nasn.org
nasn@nasn.org

November 6, 2007

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-2287-P
Mail Stop S3-14-22
7500 Security Boulevard
Baltimore, MD 21244-8018

To Whom It May Concern:

Reference: File code CMS-2287-P

The National Association of School Nurses (NASN) is submitting the following comments on the Proposed Rule for Elimination of Reimbursement under Medicaid for School Administration Expenditures and Costs Related to Transportation of School-Age Children Between Home and School, as published in the Federal Register, September 7, 2007.

The National Association of School Nurses improves the health and educational success of children and youth by developing and providing leadership to advance school nursing practice. Student success is promoted through the provision of school health services by professional registered school nurses.

NASN has significant concerns with the proposed rule because it would negatively impact the lives of school children and the practice of school nursing. Following are the specific points we would like you to consider:

- School Nurses perform duties today that go well beyond the duties of school nurses 30-40 years ago when health care costs were affordable and children with chronic health conditions were not "main-streamed." Today, because of Federal laws like the Individuals with Disabilities Education Improvement Act, there are children attending school in wheel chairs, with gastric tube feedings, respiratory ventilators, central venous lines, pumps and other complex medical technologies. School Nurses meet the health care needs of those and all students, and administrative activities are an essential part of providing nursing services to students.

Recommendation: CMS continues Medicaid reimbursement to schools for Medicaid Administrative Activities, because Medicaid Administrative Claiming activities legitimately occur in schools.

- The proposed rule states that school-based administrative activities fail to meet the statutory test under section 1903(a) (7) of "being necessary...for



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the proper and efficient administration of the State plan.” NASN disagrees for the following reasons:

1. School-based administrative activities defined in the proposed rule, specifically Medicaid outreach, eligibility intake, coordination of transportation in support of Medicaid-covered direct health services, information and referral, coordination and monitoring of health services and interagency coordination are case management activities, and they are core to the practice standards of school nursing. Those activities greatly contribute to efficient administration of the State plan through efficacious and cost-effective management of chronic and acute health conditions of Medicaid eligible students.
2. School nurses intervene with Medicaid outreach before students seek expensive care in hospital emergency departments for non-emergent health care problems.
3. School nurses engage in all administrative activities necessary to ensure that students receive medically necessary and cost-effective health care in the community.

Recommendation: CMS continues Medicaid reimbursement to schools for Medicaid Administrative Activities, because those activities are necessary for the proper and efficient administration of the State plan.

- The proposed rule states that due to inconsistent application of Medicaid requirements by schools to the types of administrative activities conducted in the school setting, the Secretary has determined that such activities can only be properly conducted, overseen and appropriately allocated to Medicaid when conducted by employees of the State or local Medicaid agency. NASN disagrees for the following reasons.
 1. School nurses are knowledgeable about Medicaid eligibility in their states, and are in daily contact with Medicaid-eligible students whose parents need assistance in applying for Medicaid.
 2. Mostly due to lack of knowledge and possibly a language barrier, and often a lack of transportation, those parents are unable to connect with employees of the local Medicaid agency.
 3. Because school nurses practice where children spend most of their time, they have an advantage over local Medicaid agency employees in identifying low-income Medicaid eligible students in need of medical assistance, and in assisting their parents with the Medicaid application process.
 4. School nurses conduct case management which includes all types of Medicaid administrative activities. Section 1905 (a)(19) of the Act includes case management services [as defined in 1915 (g)(2)] as a covered service under the definition of medical



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assistance, and section 1915 (g)(2) defines case management services as “services which will assist individuals eligible under the plan in gaining access to needed medical, social, educational, and other services.” Certainly, the allowable school-based Medicaid administrative activities outlined in the May, 2003, *Medicaid School-based Administrative Claiming Guide* serve to assist eligible students in gaining access to needed medical, social, educational, and other services.

Recommendation: CMS continues Medicaid reimbursement to schools for Medicaid Administrative Activities, because those activities fit the definition of case management, a direct service provided by school nurses.

- A recent NASN study on School Nurse Staffing indicates that seventy-five percent of U.S. public schools employ school nurses. Schools in 47 states do some type of Medicaid claiming for health care services provided at school so children can stay in school and their parents can remain at work. Eliminating Medicaid administrative claiming could lead to a decrease in the number of school nurse positions in school districts and therefore, much needed direct health services, as well as medical assistance for our youngest and most vulnerable citizens. Children represent half of all Medicaid enrollees, but account for only 17% of total program spending (Kaiser Commission September 2007). Therefore, Medicaid reimbursement to schools for Medicaid administrative activities is by no means “draining the fund.” CMS intended elimination of federal financial participation for school-based administrative claiming means that efficient and effective school nursing case management for meeting the health needs of school children will go unmet and preventable consequences will be long lasting for families and our society.

Recommendation: CMS continues Medicaid reimbursement to schools for Medicaid Administrative Activities, because those funds are necessary for continuation of much needed school health services by professional school nurses.

- The proposed rule states that HHS and the GAO have identified school district administrative costs as expenses that are susceptible to widespread fraud and abuse and that Congress is concerned about the dramatic increase in Medicaid claims for school-based costs, yet there are no examples given for fraud and abuse. The GAO Report issued in April 2000 on Medicaid in Schools indicated that a lack of direction from CMS was a significant contributor to the errors found in state audits. Having clear and consistent procedures from CMS and state Medicaid agencies that are compatible with the education laws is the best way to



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prevent any fraud and abuse of the system. Even if there are isolated examples of improper billings, it has never been shown they are purposeful fraud. It is an outcome of confusion with a complex system and lack of direction from CMS.

Recommendation: CMS continues Medicaid reimbursement to schools for Medicaid Administrative Activities and further guidance through specific procedures compatible with education laws.

Thank you for the opportunity to comment on the proposed rule.

Sincerely,

A handwritten signature in cursive script that reads "Donna Mazyck".

Donna Mazyck, RN, MS, NCSN
President

Submitter : Michael Toothman

Date: 11/06/2007

Organization : Youth Services System, Inc.

Category : Social Worker

Issue Areas/Comments

GENERAL

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Proposed changes will cause great hardships to students and to rural schools seeking to transport students to receive the free public education guaranteed under the WV Constitution. Additionally the cutbacks that will affect the underfunded federal IDEA program pose a long-term risk to the viability of our communities where utilizing the skill and talent of every person, regardless of their level of physical disability is crucial. These proposed changes offer a pennywise and pound-foolish means to save federal dollars at the expense of children and their communities.

Submitter : Paula Cocke

Date: 11/06/2007

Organization : Paula Cocke

Category : Academic

Issue Areas/Comments

GENERAL

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I encourage you not to cut the funds for administrative claiming. Pittsylvania County is very careful to report things that are legitimate. We have been well trained and have people available during the time study time if we have questions on how to code something. These funds have allowed Pittsylvania County to provide things that otherwise would not have been provided. We are professionals and work hard to do our best. Everyone should not be punished because there are a few that use bad judgement.

Submitter : Cynthia Micale
Organization : Solvang School District
Category : Individual

Date: 11/06/2007

Issue Areas/Comments

GENERAL

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The problem with MAA lies in the manner in which school districts access funds. The system was set up for misuse from the get go. The idea of schools marketing and assisting families with MediCal and Healthy Families Insurance is brilliant. The time survey submittal for reimbursement is ridiculous. Schools should continue their MC/HF services but be paid in a categorical fashion. A per child amount could be based on kids qualifying for free and reduced lunch in the district. Districts would then implement a service plan that would be audited every three years with all the other categorical programs. Taking the funds away from schools will now be devastating. Districts like ours with declining enrollment, have no extra money. We have become dependent on MAA funding out of necessity. Instead of pulling the plug altogether. Let's rework the funding requirements so both schools and students come out winners.

Submitter : Ms. Jeanine Dement-Sarten

Date: 11/06/2007

Organization : Abilene ISD

Category : Individual

Issue Areas/Comments

GENERAL

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please continue funding in this area.