

Submitter : Mr. Cameron Boyd
Organization : Norfolk Public Schools
Category : Other Health Care Provider

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2287-P-910-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

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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.

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

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

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

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

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.

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Submitter :

Date: 11/06/2007

Organization :

Category : Speech-Language Therapist

Issue Areas/Comments

GENERAL

GENERAL

As a school employee required to fill out the reimbursement every month, I question where the money is going. It is NOT going into our salaries or materials budget. If the money is used strictly for transportation that is fine, but I'm not sure where it ends up. Another issue I have is the amount of information on the web about the students' whose families refuse to sign the reimbursement paperwork. Southwest Billing makes a lot of money from this too. Perhaps it is time for Medicaid Reimbursement to END!

Submitter : Dr. Benny Gooden
Organization : Fort Smith Public Schools
Category : Other Government

Date: 11/06/2007

Issue Areas/Comments

GENERAL

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The proposed rule change to eliminate reimbursement under Medicaid for school administrative expenditures and costs related to transportation of school-age children between home and school is a wanton attempt to shift medically related costs to public schools.

The students who require services are readily available at schools and personnel who perform related administrative services should be considered as would comparable personnel in any other setting.

Likewise, transportation costs to the point-of-service, in this case the school, should be reimbursable just as for other providers.

Schools providing eligible Medicaid services should be treated equally to all other service providers. To implement this proposed rule is a egregious affront to equity and justice within the system.

Submitter : Mrs. Karen Taylor
Organization : Norfolk Public Schools
Category : Academic

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

It is vital to special education and the services we are expected to provide that the funds are available to support the students we serve. As budgets get cut, the funds assist with materials, supplies and transportation that is getting more expensive.

CMS-2287-P-913-Attach-1.DOC

CMS-2287-P-913-Attach-2.DOC

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Attention: CMS-2287-P
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Submitter :

Date: 11/06/2007

Organization : Norfolk Public Schools

Category : Academic

Issue Areas/Comments

GENERAL

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"See Attachment"

CMS-2287-P-914-Attach-1.RTF

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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. Danny Stamp
Organization : Kern High School District
Category : Academic

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

Our Special Education students depend on us for their education, transportation, health and welfare. The Kern High School District has followed the rules and will continue to follow them. Money is always an issue so we rely heavily on the Medical reimbursement for legitimate services. We do not want this taken away. Thank you.

Submitter :

Date: 11/06/2007

Organization :

Category : Local Government

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

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

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

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

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

Submitter : Ms. Enid Hurtado

Date: 11/06/2007

Organization : Ms. Enid Hurtado

Category : Academic

Issue Areas/Comments

GENERAL

GENERAL

See attachment

CMS-2287-P-917-Attach-1.TXT

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 :

Date: 11/06/2007

Organization :

Category : Individual

Issue Areas/Comments

GENERAL

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CMS-2287-P-918-Attach-1.TXT

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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 : Dale Knight
Organization : Santa Cruz County Office of Education
Category : Academic

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

I am very distressed learning that the proposal to eliminate MAA funds is on the table for next year. I have seen the monies provided by MAA completely change several students' quality of education. For example, last year, I had a student in my high school English class receive a complete dental makeover. Her teeth were so bad that she often found it difficult to eat and therefore, was rather underweight and depressed. She also had a very difficult time completing her school work. MAA monies were used to fix the problems and her grades, weight, and disposition went up tremendously. The family was so poor, that they were living in a car in local parks...it is understandable that she had such problems with her teeth. Those in plenty are those who have a duty to help those in need. Medical care in the USA is the lowest on the W.H.O scale; 37th out of 190 and DEAD-LAST of industrialized nations. Please, do not perpetuate the statistic and deny those in need of health care just to make a few more dollars or use the dollars for something less noble...like WAR.

Submitter : Mrs. Kristine Ho
Organization : Sabal Elementary–Brevard Public Schools
Category : Other Health Care Professional

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2287-P-920-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 :

Date: 11/06/2007

Organization :

Category : Nurse Practitioner

Issue Areas/Comments

GENERAL

GENERAL

I have seen the benefits to students first hand with the MAA program. It is the vital link to helping medically indigent students access health care and become healthier in order to learn. Please do not discontinue this program

CMS-2287-P-922

Submitter : Ms. Susan Gorin
Organization : National Association of School Psychologists
Category : Other Health Care Professional

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

See attached letter from the National Association of School Psychologists.

CMS-2287-P-922-Attach-1.DOC

#922



NATIONAL ASSOCIATION OF SCHOOL PSYCHOLOGISTS
4340 East West Highway, Suite 402
Bethesda, MD 20814

*Enhancing the mental health and
educational competence of all children.*

Phone: 301-657-0270
Fax: 301-657-0275 • TTY: 301-657-4155
Web: www.nasponline.org

November 6, 2007

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

Re: File Code CMS-2287-P

To Whom It May Concern:

The National Association of School Psychologists (NASP) submits these comments regarding the notice of proposed rulemaking (NPRM) with respect to the Medicaid coverage of administration and transportation services that was published in the Federal Register on September 7, 2007. NASP represents over 26,000 school psychologists working in schools providing educational, mental health and other related services to students including Medicaid recipients.

We believe that proposed rule 2287-P is contrary to established federal Medicaid law. We feel that certain aspects of the proposed regulations would critically limit the availability and accessibility of necessary services for children in need, especially children with significant emotional and behavioral needs. Revoking the ability of schools to seek reimbursement for transportation and some administrative costs, would limit the ability of schools to provide these services commensurate with student need and would place a new tax burden on local communities in an effort to meet these needs.

Since 1986, federal Medicaid policy has explicitly recognized the essential nature of the link between Medicaid and health care for low income children whose special health care needs make management of and access to treatment in school settings an imperative. However, recent actions by the Centers for Medicare and Medicaid Services (CMS), including audits and proposed regulatory cuts in payments to schools for providing health care and mental health care services have created an atmosphere of uncertainty about the continued ability of children with significant conditions to get the care they need so that they can continue their education in their public schools. Rather than discouraging health care in schools, CMS should provide extensive technical assistance to states that seek to optimize children's opportunities to receive the health care they need in order to receive instruction in their local schools vs. their homes.

Issues of concern include:

1. CMS has failed to provide adequate guidance to schools in order to improve claiming practices and procedures.

NASP recognizes that CMS has an obligation to be a “good steward” of federal funds and to respond to the growing concern associated with the appropriateness of Medicaid claiming by schools. However, we feel that it is misguided for CMS to respond to this concern by proposing changes to claiming eligibility rules without first providing guidance, training and technical assistance to schools in order to improve claiming accuracy. According to research (AASA, 2007) CMS has provided guidance to states only twice (in 1997 and 2003) following the Bowen decision in 1987 and the Title XIX amendment in 1988. Given the complexity and excessive detail involved in Medicaid claiming and the insufficient guidance provided by CMS, it should be no surprise that school districts would struggle with consistency and accuracy in claiming.

2. The CMS proposal limiting the ability of schools to bill for transportation of a school-age children from home to school and back is in direct violation of Section 1903 (c) of Title XIX.

Section 1903 (c) was specifically created to help pay the costs of related services that are eligible for reimbursement under Title XIX and is historically, a large part of why schools are permitted to claim for Medicaid. Under this provision, the Secretary may not refuse to reimburse transportation costs of students with disabilities who are Medicaid eligible if those services are considered an appropriate “related service”. The Individuals with Disabilities Education Act (IDEA) clearly considers the transportation of a student with disabilities a related service when specialized transportation is required in order for the student to receive a Free Appropriate Public Education (FAPE). This CMS proposal should be withdrawn as it stands in direct conflict with existing federal law that specifically states that transportation of a student to and from school and back again may be considered a necessary educational service, and is therefore, an eligible expense for reimbursement.

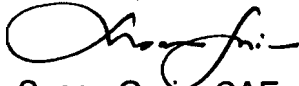
3. The CMS proposal to limit Federal Medicaid payments for administrative activities performed by school employees, contractors, or anyone under the control of the educational institution exceeds the authority of CMS and is inconsistent with previous guidance issued in 1997 and 2003.

This proposal is inconsistent with previous guidance issued by CMS and shows a lack of understanding about the necessity of school administrative activities and personnel in ensuring federal compliance. Schools have the authority to determine who the appropriate service delivery and administrative personnel are in order to execute the services and programs of the school district. Current Medicaid reimbursement practices recognize that the services provided by administrative personnel in medical clinics and offices should be eligible for

reimbursement. Why should schools be any different? This proposal threatens the ability of schools in small and rural communities to hire the needed administrative personnel to implement these programs to children and families in need. If CMS is concerned with the inconsistent application of Medicaid requirements by schools (as stated as a rationale for this proposed change) then the appropriate action would be for CMS to provide guidance, training, and technical support to improve the consistent administration of this program vs. limiting the reimbursement of these services as an eligible expense.

For these and other reasons, we urge the Secretary to withdraw the proposed rule. Thank you for the opportunity to comment.

Sincerely,



Susan Gorin, CAE
Executive Director

Submitter : Mr. David Brewer, III
Organization : Los Angeles Unified School District
Category : Other Government

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

see attachment

CMS-2287-P-923-Attach-1.DOC

**Los Angeles Unified School District
Comments on Proposed Rule 2287-P
November 5, 2007**

The Los Angeles Unified School District (LAUSD) strongly opposes changes in the Medicaid program as proposed in Centers for Medicare and Medicaid Services (CMS) Rule 2287-P. Elimination of Local Education Agencies (LEA) as an entity from Medicaid Administrative Activity reimbursement will have a devastating impact upon California's effort to outreach, enroll, and make eligible uninsured children in the state's Medicaid Program.¹ It will curtail California's efforts to operate the "express enrollment" program via LEAs using the free and reduced price meal applications as a vehicle for Medicaid enrollment as is expressly permitted by federal statute (42 U.S.C. §1396a(a)(8) which explicitly determines LEAs to be "qualified entities" for this purpose. We are puzzled that CMS suggests in rule 2287-P that Federal Financial Participation (FFP) is only available for these functions when "conducted by employees of the state or local Medicaid agency." To our knowledge the state Medicaid agency does not provide these services nor do they furnish any direct healthcare to recipients. They are, rather, the fiduciary and oversight agent of the Medicaid program that carries out Medicaid activities through relationships with other entities of our state, county, and local governments.

Proposed rule 2287-P will decrease the capacity of LEAs to establish and maintain Medicaid service pathways that meet the needs of some of California's poorest children as is contemplated in both the *State Manual for EPSDT Services* and in statute. School based health clinics; mobile van and school-based EPSD service centers reach underserved populations of children, demonstrate penetration into health disparate populations, and provide access to care in geographically underserved areas of California.² In our great state many school-based programs are aimed at disease prevention and better chronic disease management of the poorest and most underserved children as measured by federal standards. Elimination of FFP for program planning and administrative activity that supports some of our most effective Medicaid children's programs is an egregious erosion of California's authority to plan for and maintain operations for the effective and efficient delivery of care in underserved communities. The result of this rule on our state-federal partnership will be the elimination of innovative programs delivering effective disease prevention and early intervention services, and, increased future cost to the Medicaid program. Sadly,

¹ LAUSD's toll free healthcare helpline helps students to enroll, maintain eligibility, and access Medicaid services

² States must: "Provide such safeguards as may be necessary to assure that eligibility for care and services under the plan will be determined and such care and services will be provided, in a manner consistent with simplicity of administration and the best interests of recipients." U.S.C. §1396a(a)(19)

we believe that Medicaid coverage and service access by our state's poorest children will likely decrease as a direct result of rule 2287-P.

LAUSD also objects to the elimination of the fee-for-service specialized transportation that brings some of our most medically fragile students into an out of school settings. In California, these are medically necessary services developed pursuant to previously issued CMS guidance, and we believe are delivered under existing law which allows Medicaid to be the payer for Medicaid services provided to Medicaid-eligible students under the Individuals with Disabilities Education Act. With passage of the Medicare Catastrophic Coverage Act of 1988, Congress clearly intended to preclude the Secretary of Health and Human Services from denying payment for Medicaid-covered services provided pursuant to a child's Individualized Education Program (IEP) or Individualized Family Service Plan (IFSP). We urge CMS to ensure continued availability of federal financial participation in the costs of Medicaid-covered services in eligible students' IEPs and IFSPs.³

With regard to the impact of these actions upon healthcare access, we do not believe that CMS is aware that these specialized transportation services bring medically fragile students to and from title 5 funded clinics in special schools (Medical Treatment Units) that are operated by non-school providers. Furthermore, students are transported from community school settings to other specialized school-based treatment facilities for the sole purpose of obtaining prescribed Medicaid services in cases where the necessary equipment or specialized personnel are unavailable in local school or community settings. Hence, this rule would eliminate funding for a transportation service specifically required for the access to a Medicaid service treatment plan.

The line between delivery of services in schools and in community settings is neither distinct nor ideal in a state that attempts to meet disparate population needs. Schools are a nearly universal piece of community infrastructure – a community asset that has been repeatedly used in our city's history for the delivery of public health, community health, and personal health services to children in many communities that do not have equal access to providers of Medicaid services. In the interest of serving poor children, CMS should encourage states to more fully utilize schools as assets in reaching our poorest children (rural and urban) for the purpose of improving our nation's health. As described in the State Medicaid Manual (Section 5230: Coordination with Related Agencies and Programs), Medicaid agencies are required to coordinate services

³ Nothing in this chapter shall be construed as prohibiting or restricting or authorizing the Secretary to prohibit or restrict payment under subsection (a)[relating to federal payments generally] for medical assistance for covered services furnished to a child with a disability because such services are included in the children's individualized education program established pursuant to part B of the [IDEA] 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 [the IDEA]. 42 U.S.C. §1396b(c).

with local education agencies, title 5 grantees, providers, and other public and private agencies.

The Los Angeles Unified School District joins Governor Schwarzenegger, members of the California congressional delegation, PTA, child disability, and child welfare advocates throughout the country that have written to Secretary Leavitt opposing the changes set out in Rule 2287-P. We respectfully request that CMS withdraw this rule and yield to California its statutory authority to determine strategies and activities that contribute to the efficient and effective administration of California's Medicaid program. Furthermore, we urge CMS to consider the Congressional prohibition against restricting payments to LEAs for specialized transportation services from, to, and among school settings as an integral part of the treatment plan for receiving Medicaid covered services pursuant to IEPs and IFSPs.

Respectfully submitted,

David Brewer, III
Superintendent
Los Angeles Unified School District

Submitter : Mr. Brent Ewig

Date: 11/06/2007

Organization : AMCHP

Category : Association

Issue Areas/Comments

GENERAL

GENERAL

see attachment

#924

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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 :

Date: 11/06/2007

Organization :

Category : Academic

Issue Areas/Comments

GENERAL

GENERAL

As a public school employee, I feel that too much money is going to the "billing intermediary. Eliminate this program and take the money that was reimbursed to schools and paid to the intermediary and use it for direct healthcare services for children and uninsured families.

Submitter : Mrs. Janet Hasler
Organization : Casa Grande Elementary School District
Category : Academic

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

I am opposed to the elimination of reimbursement under Medicaid for School Administration Expenditures.

Submitter : Velma Lomax

Date: 11/06/2007

Organization : Ventura Unified School District

Category : Academic

Issue Areas/Comments

GENERAL

GENERAL

Please do not let this valuable program go. There are too many children that have benefitted from this program. This has always been a win-win for kids. Let's keep our eye on what is important!

Submitter : Ms. Lynn C Ruhl
Organization : Milwaukee Public Schools
Category : Other Government

Date: 11/06/2007

Issue Areas/Comments

GENERAL

GENERAL

See Attachment

CMS-2287-P-928-Attach-1.DOC



MILWAUKEE PUBLIC SCHOOLS
CHIEF FINANCIAL AND OPERATIONS OFFICER
Michelle J. Nate, CPA
 5225 West Vliet Street
 P.O. Box 2181
 Milwaukee, Wisconsin 53201-2181
 Telephone: (414) 475-8336
 Fax: (414) 475-8599
 TTY: (888) 868-3077
 www.milwaukee.k12.wi.us

**ACCOUNTING AND
 PROCUREMENT**

Jim Wegman, CPA, Manager
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 Fax: (414) 475-8104

**BUDGET AND FINANCIAL
 PLANNING**

Deborah Wegner, CPA, Manager
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**DIVERSITY AND
 COMMUNITY ENGAGEMENT**

Renee Taylor, Manager
 Telephone: (414) 438-3680
 Fax: (414) 438-3662

**FACILITIES AND
 MAINTENANCE**

Richard W. Moore, P.E., Director
 Telephone: (414) 283-4600
 Fax: (414) 283-4682

GRANT DEVELOPMENT

Marie Thompson, Manager
 Telephone: (414) 475-8203
 Fax: (414) 475-8422

**LEGISLATIVE POLICY
 DEVELOPMENT**

Telephone: (414) 475-8731
 Fax: (414) 475-8270

**SCHOOL BUSINESS
 SERVICES**

Mike Turza, Director
 Telephone: (414) 475-8058
 Fax: (414) 475-8113

**SCHOOL NUTRITION
 SERVICES**

Kymm Mutch, Administrator
 Telephone: (414) 475-8362
 Fax: (414) 475-8376

TECHNOLOGY

James Davis, Director
 Telephone: (414) 475-8171
 Fax: (414) 475-8246

November 5, 2007

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

Dear Sir or Madam:

Milwaukee Public Schools strongly opposes the proposed rule on school-based administrative costs and transportation to and from school that was published September 7, 2007, at 72 Fed. Reg. 51397, (CMS-2287-P).

The proposed rule states that the costs to administer the state plan are only reimbursable if those costs are incurred by State or local Medicaid agency personnel. The state of Wisconsin has always included within its Medicaid State Plan Amendment Wisconsin school districts as its SBS Medicaid Partners because they provide Medicaid-related services to Medicaid-eligible children within their schools.

The state of Wisconsin authorized local school employees, their contractors, and those under the control of the state's educational institutions to act as agents of the State in the specific task of providing Medicaid-based services for school-aged children with Individualized Education Programs (IEP) established under the Individuals with Disabilities Education Act (IDEA). Section 1903(w) (7) (G) of the Social Security Act supports this state-local arrangement. The act clearly defines units of local government as a city, a county, a special purpose district, or other governmental unit of the state. As such, we believe the proposed rule would inappropriately narrow the definition of this law and would unnecessarily limit Wisconsin's and other states' flexibility in providing critical Medicaid services through local school districts.

Congress amended section 1903(c) of the Social Security Act to ensure that Medicaid funding was available for services provided in schools. Thus, congressional intent is clear that Medicaid reimbursement should not be refused for activities performed in school settings. By excluding funding for administrative activities performed in school by school employees, the proposed rule goes against clear congressional intent and federal court interpretation of the Medicaid statute. Although there have been problems with improper billing in a small number of states, that does not justify taking the benefit from all states.

Instead CMS should take appropriate steps to adequately address those instances, rather than penalizing everyone.

The proposed rule would also eliminate all federal funding for transportation between home and school for school-age children with an IEP mandated under IDEA. The rule would still provide for transportation from school or home to a non-school based medical service provider, but not for those students who are receiving those same services within the school setting. Federal funding also still remains for transportation of all other groups of Medicaid-covered individuals to medical service providers. This funding exception violates federal regulations that require comparability in the amount, duration, and scope of services for all those who qualify for Medicaid services. The rule should be withdrawn as it violates federal comparability principals. Funding cannot be denied for an otherwise valid Medicaid expenditure just because it is associated with schools. CMS has also pointed to improper billing in the past as justification for the rule. Once again, those specific problems should be addressed rather than eliminating all school-age transportation funding.

This proposed rule will negatively impact children, decrease efficiency and unfairly burden schools. MPS is concerned about both the short and long-term impact this rule will have on the healthcare safety net for some of our most vulnerable children and we urge you to withdraw this rule in its entirety and to continue to work with Wisconsin and other states to support and improve the Medicaid program to better serve its beneficiaries.

Sincerely,

/S/

Lynn C. Ruhl
Budget Analyst

Cc: William G Andrekopoulos
Michelle Nate
Patricia Yahle
U.S. Senator Russ Feingold
U.S. Senator Herb Kohl

Submitter : Mrs. Diane C. Wray

Date: 11/06/2007

Organization : Phoenix Union High School District

Category : Academic

Issue Areas/Comments

GENERAL

GENERAL

We strongly oppose the implementation of this rule change. Schools have become an important and cost-effective provider of essential health services for disabled children. These children are transported to school in small vans with special equipment and/or special staffing to meet their needs. The loss of this funding would severely impact our school district and our ability to provide services to all children. As a Title I school district, we assist over 3000 students with disabilities and the revenue generated from the Medicaid program goes back to support costly equipment needs and program support for students with disabilities who can not advocate for themselves.

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