

**Submitter :** Mrs. Amy Stilley  
**Organization :** Pittsylvania County, VA, Schools  
**Category :** Individual

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

As a early childhood special education teacher in a public school system with limited funds, I personally appreciate the added revenue that the reimbursement provides in the way of needed equipment and supplies for my students. Our school system is careful with our spending and we are able to give our students quality services with little money. By using the same precise philosophy, we carefully document our Medicaid reimbursement claims with integrity and truthfulness to the best of our abilities. Please let us continue to do so!

**Submitter :** Mr.  
**Organization :** Pittsylvania County School District  
**Category :** Individual

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

I am the school counselor at a elementary school. Many of our families are at or below the poverty level. They have benefitted from the services provided by income generated by this program.

**Submitter :** Ms. Julie Lewis  
**Organization :** Georgia Department of Education  
**Category :** State Government

**Date:** 11/06/2007

**Issue Areas/Comments**

GENERAL

GENERAL

See Attachment

CMS-2287-P-932-Attach-1.PDF

**GEORGIA DEPARTMENT OF EDUCATION**

Comments on CMS Regulations, Proposed Rule Medicaid Program; Elimination of Reimbursement Under Medicaid for School Administration Expenditures and Costs Related to Transportation of School-Age Children Between Home and School

Re: File Code CMS-2287-P

Contact: Julie Lewis, Deputy General Counsel, 404-463-537, [jlewis@doe.k12.ga.us](mailto:jlewis@doe.k12.ga.us)

**Georgia Department of Education Recommendations:**

(1.) Section 431.53 should be revised to read as follows:

Sec. 431.53 Assurance of transportation.

(a) A State plan must--

(1) Specify that the Medicaid agency will ensure necessary transportation for recipients to and from providers; and

(2) Describe the methods that the agency will use to meet this requirement.

(b) For purposes of this assurance, necessary transportation does include transportation for school-age children between home and school if transportation is included as a related service in the child's IEP.

(2.) Do not add new section 433.20

(3.) Section 440.170(a)(1) should be revised to read as follows:

Sec. 440.170 Any other medical care or remedial care recognized under State law and specified by the Secretary.

(a) Transportation. (1) "Transportation" includes expenses for transportation and other related travel expenses determined to be necessary by the agency to secure medical examinations and treatment for a recipient. Such transportation includes transportation of school-age children from home to school and back where transportation is included in the child's IEP as a related service.

**Rationale for Recommendations Above:**

In *Cedar Rapids Community Sch. Dist. v. Garret F.*, 526 U.S. 66 (1999), the United States Supreme Court held that continuous nursing services required by a quadriplegic, ventilator-dependent student were "related services" that had to be provided by a school district during school hours. While many school districts were serving high need students prior to the *Garret F.* decision by the U.S. Supreme Court, this landmark decision drastically increased the number of high needs students with disabilities being served full-time in the classroom by the public

schools. In the supplementary information accompanying this proposed rule, Section I. D., “Improper Billing,” discusses Congress’s “concern about the dramatic increase in Medicaid claims for school-based costs, which were the subject of two U.S. Senate Finance Committee hearings, held in June 1999 and April 2000.” It is paramount to note that the *Garret F.* decision was issued on March 3, 1999, and that the “dramatic increase in Medicaid claims for school-based costs” should have been directly attributed to that very decision. Suddenly, schools were expected to serve students with severe medical conditions and needs. School personnel had to provide students with services such as clean intermittent catheterization, ambu bagging, and suctioning of a tracheotomy tube. School personnel also had to be prepared to provide these types of services while transporting students to and from school.

As such, it is critical that school districts have the ability to seek and receive reimbursement based on a requirement under federal law; a federal mandate that includes transportation in the definition of related services<sup>1</sup>, which must be provided to students with disabilities in order for the student to receive a free and appropriate education. Therefore, where a student requires transportation as a related service in his or her IEP, a school district must be able to receive reimbursement for transportation costs.

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<sup>1</sup> Under IDEA, the term “related services,” means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children. 20 U.S.C. 1402(26)(A).

**Submitter :** Dr. Kay Turner  
**Organization :** Humboldt Unified School District  
**Category :** State Government

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

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

2

**Submitter :** Mrs. Barbara Lewis  
**Organization :** Stamford Public Schools  
**Category :** Individual

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

GENERAL

"See Attachment"

CMS-2287-P-934-Attach-1.WPD

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

To Whom It May Concern:

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. As a district administrator this is unconscionable.

### **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.

I want to 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.

Barbara Lewis  
Individualized Education Administrator- Elementary Education  
Stamford Public Schools  
Stamford, CT

**Submitter :** Ms. Lisbeth Blankenship  
**Organization :** Phoenix Union High School  
**Category :** Academic

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

We strongly oppose the implementation of this rule change. Schools have become an important and cost-effective provider of essential health services for disabled children. These children are transported to school in small vans with special equipment and/or special staffing to meet their needs. The loss of this funding would severely impact our school district and our ability to provide services to all of our children.

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

**Submitter :** Ned Pratt  
**Organization :** Marlborough Public School District  
**Category :** Academic

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

CMS-2287-P-936-Attach-1.DOC

CMS-2287-P-936-Attach-2.DOC



# Marlborough Public Schools

## Pupil Personnel Services

Marlborough District Education Center  
17 Washington Street  
Marlborough, MA 01752  
Phone 508-460-3559  
Fax 508-485-1142

**Ned Pratt, Pupil Personnel Director**

TO: Center for Medicare and  
Medicaid Services

FR: Ned Pratt  
PPS Director

RE: Proposed Rule Changes - Medicaid

DA: November 5, 2007

I am the Pupil Personnel Director for a school district of approximately 5,000 students located in the Metro West region of Massachusetts. In my role as PPS Director, I share responsibility for over 1,200 disabled students as well as over 500 ELL students.

The proposed plan to eliminate federal Medicaid reimbursements to local school districts will adversely affect the service delivery of these populations in the following manner:

- While these reimbursements do not flow directly into my budget, the reduction and/or elimination of these reimbursements will affect my budget in an indirect manner. In essence, I believe that my budget will be cut on the city-wide level in a proportionate manner as the amount of my former reimbursement.
- The implementation of this change within the context of less than one year's notice will reduce my service delivery to the affected populations.
- I do not believe that the argument set forth in the proposed rule changes that the state should be responsible for service delivery, and, therefore, receive the reimbursement is an appropriate service delivery model. We already have some significant issues with the manner and style that our social service agencies serve their populations; we do not need another juggernaut added to the state system!

I heartily support the Kennedy amendment to SCHIP legislation to impose a moratorium against regulatory or other changes to school-based Medicaid claims.

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

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

see attachment

CMS-2287-P-937-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.

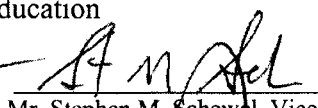
It is estimated that the proposed cuts would cost school districts around the country more than \$615 million in annual funding and \$3.5 billion over five years. In Durham County, these changes would represent a loss of \$484,000 annually and \$2.6 million over a five year period for the more than 3,600 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.

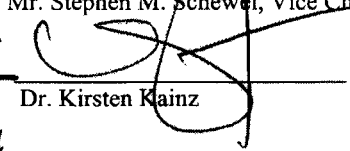
Sincerely,


The Durham County Board of Education

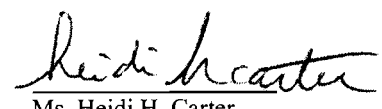
  
 Ms. Minnie M. Forte-Brown, Chair

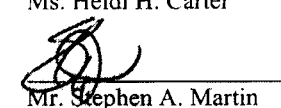
  
 Mr. Stephen M. Schewel, Vice Chair

  
 Pastor Fredrick A. Davis

  
 Dr. Kirsten Rainz

  
 Ms. Omega Curtis Parker

  
 Ms. Heidi H. Carter

  
 Mr. Stephen A. Martin

**Submitter :** Mr. Thomas Howell  
**Organization :** Lamar County Board of Education  
**Category :** Academic

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

It is very difficult to meet the financial demands of serving special education students who receive physical therapy, occupational therapy, speech therapy, and nursing services with the monies we are presently receiving as a reimbursement from Medicaid. Many students aren't on Medicaid. We still are obligated to meet their IEP needs. Money is tight. We do not need to cut this funding! We are a small rural county school system with little financial resources. This would absolutely break our bank and our spirit.



**Submitter :** Mrs. Sheila Lyons  
**Organization :** Pomona Unified School District  
**Category :** Nurse

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

I am asking that rule 2287-P be rejected. The school has a unique role in linking children to Medicaid services. The school population would otherwise be neglected. School staff provide substantial social and economic benefits when children and families are linked to health services. Without school assistance many children and families would go without medical referral and follow-up. Good health is critical to school attendance and lifetime success. Please reject rule 2287-P.

**Submitter :** Mr. Chris Hogan

**Date:** 11/06/2007

**Organization :** Phoenix Union High School District

**Category :** Academic

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

I believe it is wrong to cut even more funding for school. What happen to the idea of "no child left behind" and wanting to educate our students? School district have enough of a burden, now eliminating Medicaid dollors. Will this money go to transporting Iraqis to school? What a shame!! I believe if there is a good reason, cause, and a benefit then why not do it. Why hurt our students!!

**Submitter :** Ms. Phyllis Yates  
**Organization :** Ashe County Schools  
**Category :** Academic

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

GENERAL

see attachment

CMS-2287-P-941-Attach-1.DOC

# Ashe County Board Of Education

Donnie R. Johnson, *Superintendent* • Charles L. King, *Chairman* • Charles B. Jones, Jr., *Vice Chairman* • Dr. Lee Beckworth • A.B. Weaver • Dorothy Witherspoon

PO Box 604, 320 South Street • Courier No. 15-65-01 • Jefferson, North Carolina 28640

(336)246-7175 • (336)246-7609 Fax • <http://www.ashe.k12.nc.us>

November 5, 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 regulations 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 Ashe County, these changes would represent a loss of approximately \$10,500 annually and \$52,500 over a five-year period for the more than 513 special needs students we currently serve. If these dollars are lost, it will only exacerbate the existing deficit in state supported funding for Ashe County's special needs children.

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

Sincerely,

The Ashe County Board of Education

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Charlie King, Chairman

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C. B. Jones, Vice Chairman

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Dorothy Witherspoon, Board Member

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A. B. Weaver, Board Member

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Lee Beckworth, Board Member

**Submitter :** Mrs. Patricia Shubert

**Date:** 11/06/2007

**Organization :** Norfolk Schools

**Category :** Academic

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

See attachment

CMS-2287-P-942-Attach-1.DOC

## **We need to stop requiring educational services for which were are provided no funding for personnel, materials, and equipment!!!!**

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

Dear Sir(s) or Madam(s):

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

### **Introduction**

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

### **Major Issues and Concerns**

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

states that, “CMS recognizes that schools are valid settings for the delivery of Medicaid services”, yet the proposed rules would still not recognize the need for transportation to and from school for Medicaid-eligible children who take advantage of these services at school and early childhood settings.

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

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

### **Legal Basis for Providing Transportation and Administrative Claiming**

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

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

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

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

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

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

### **Federal Cost Shifting and Reduced Levels of Service**

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

### **Conclusion**

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

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



**Submitter :** Mr. Raymond Scheppach  
**Organization :** National Governors Association  
**Category :** State Government

**Date:** 11/06/2007

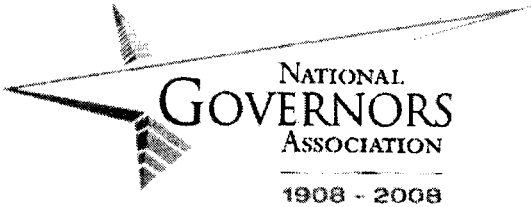
**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

CMS-2287-P-943-Attach-1.PDF



Tim Pawlenty  
Governor of Minnesota  
Chair

Edward G. Rendell  
Governor of Pennsylvania  
Vice Chair

Raymond C. Scheppach  
Executive Director

November 6, 2007

Kerry Weems  
Acting Administrator  
Centers for Medicare and Medicaid Services  
U.S. Department of Health and Human Services  
Attention: CMS-2258-P  
P.O. Box 8017  
Baltimore, MD 21244-8017

Dear Mr. Weems:

On behalf of the nation's governors, we request that the Centers for Medicare and Medicaid Services (CMS) rescind the proposed rule regarding Medicaid school-based services [CMS 2287-P], published in the *Federal Register* on September 7, 2007. Governors remain committed to working closely with our partners at the federal level to improve the integrity of the Medicaid program. However, the proposed rule represents a significant departure from our joint efforts to clarify and properly apply Medicaid policies as they relate to school-based services. Further, the rule fails to recognize that certain administrative activities performed by school-based staff and limited transportation services are instrumental to ensuring access to Medicaid services for eligible low income children. The end result of the new policies would be an unnecessary shift of \$3.6 billion over five years to states.

In the proposed rule, CMS prohibits states from receiving reimbursement for administrative claims, unless the administrative activities are conducted by employees of the state Medicaid agency. Governors believe this is inconsistent with federal and state officials' shared goal of operating an efficient Medicaid program and contrary to approved current state plans. School-based administrative activities include developing, compiling, and explaining materials to inform individuals about the Medicaid program, assisting families in collecting required information for the Medicaid application, and conducting other outreach-related activities. As required by CMS' 2003 *Medicaid School-Based Administrative Claiming Guide*, in order to submit claims for reimbursement by Medicaid, states must enter into an interagency agreement between the Medicaid agency and the appropriate state education entity. Subsequent to the 2003 guidance, states newly sought and received approval from CMS for any school-based administrative claiming programs. The proposed rule would result in a *de facto* requirement that state Medicaid agencies hire and retain a significant number of new state Medicaid agency staff to conduct the activities currently performed by school-based staff. This result would be financially and operationally inefficient compared to the current system and represents a significant cost shift to state Medicaid agencies.

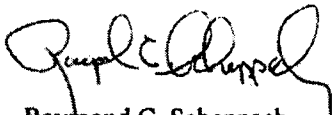
Governors also oppose the proposed rule's new restriction on transportation services to and from home and school for Medicaid eligible children. In earlier guidance, CMS clarified that federal Medicaid reimbursement was not permissible for transportation between home and school and states have worked with federal officials to comply with this policy. However, CMS also recognized there were limited situations where specialized transportation from home to school and back was necessary and appropriate due to a Medicaid eligible child's health condition. As such, CMS should preserve the authority for states to submit claims for transportation from home to school and back for Medicaid eligible children if the child's health status requires monitoring or medical related services during transport.

In recent years several iterations of the *Medicaid School-Based Administrative Claiming Guide* and guidance on transportation services have helped bring much-needed clarity to the Medicaid policy for activities performed at schools and by employees of the education system. States have worked with CMS to improve and revise, when necessary, billing policies and practices for school-based administrative claims and transportation services. Notably, CMS also has encouraged state education authorities to develop close working relationships with their state Medicaid agencies. In turn, this has helped foster a streamlined approach to delivering services and providing information to Medicaid eligible children and their families. The partnership among state agencies in conjunction with federal guidance in interpreting the school-based administrative manual has resulted in increased consistency in the application of reimbursement policies.

In addition, as an alternative to this regulation, CMS should consider investing resources from the new Medicaid Integrity Program (MIP), established in the Deficit Reduction Act of 2005 (P.L. 109-432), to address school-based policy and reimbursement concerns that may remain. Governors worked closely with the Congress and the Administration to establish the MIP program to further strengthen the integrity of Medicaid policy and financing. We believe MIP resources could assist state agencies in determining when it is reasonable to bill Medicaid and developing cost-effectiveness guidelines related to school-based administration and transportation services.

Governors believe ongoing communication between state and federal officials and targeting of MIP resources is preferable to a general prohibition on practices that are otherwise efficient and appropriate for reimbursement by Medicaid. Schools are the primary and most logical location to reach and serve children who are enrolled in or eligible for (but not yet enrolled) in Medicaid. For these reasons, we urge CMS to pursue a more reasonable approach to address any remaining concerns related to school-based services without shifting costs to states and jeopardizing critical information and services for Medicaid eligible children.

Sincerely,



Raymond C. Scheppach  
Executive Director

**Submitter :** Dr. Rebecca Cort  
**Organization :** New York State Education Department  
**Category :** State Government

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

See attachment

CMS-2287-P-944-Attach-1.PDF



**THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234**

**DEPUTY COMMISSIONER FOR VOCATIONAL AND EDUCATIONAL SERVICES FOR INDIVIDUALS WITH DISABILITIES**  
Tel. (518) 474-2714  
Fax (518) 474-8802

November 6, 2007

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

To Whom It May Concern:

I appreciate the opportunity to comment on the U.S. Department of Health and Human Services Centers for Medicare and Medicaid Services proposed Rule 2287-P eliminating Medicaid reimbursement for administrative activities and for transportation from home to school and back for school-age children with an Individualized Education Program.

The New York State Education Department's Office of Vocational and Educational Services for Individuals with Disabilities (VESID) has primary oversight responsibility for the delivery of preschool and K-12 special education services as well as adult vocational rehabilitation services. In the year ending December 2006, VESID provided administrative oversight and quality assurance for over 42,000 preschool and 409,000 school-age students participating in special education programming pursuant to the federal Individuals with Disabilities Education Act (IDEA).

The New York State Education Department (NYSED) opposes CMS Rule 2287-P, which would reduce Medicaid reimbursement for legitimate and necessary school-based services in New York State. We recognize that the U.S. Department of Health and Human Services (HHS) has long-standing concerns about improper billing by school districts for administrative costs and transportation services and that both HHS' Office of the Inspector General (OIG) and the Government Accountability Office (GAO) have identified these categories of expenses as susceptible to waste and abuse. In the attempt at reducing waste and eliminating abuse, CMS' proposed rule contradicts the primary reason for Medicaid funding in New York State - to ensure that the neediest children have access to the services they need in the best environment in which to reach children, in their schools. The proposed rule goes beyond reducing waste and abuse among the few by eliminating for all schools the positive benefits the program was designed to achieve.



The Early Periodic Screening, Diagnostic and Treatment (EPSDT) Program for Medicaid recipients ages 0-21 requires states to perform EPSDT outreach and provide information to help Medicaid-eligible children and their families access EPSDT services. As CMS is aware, its State Medicaid Manual not only encourages state Medicaid agencies to coordinate EPSDT administrative activities with school health programs of state and local agencies, but also states that federal financial participation is available to cover those costs. While school districts in New York State do not currently claim administrative costs for Medicaid, we recognize that other states do and, if implemented, the proposed rule change would increase the financial burden on school districts forced to cover these costs. NYSED encourages CMS to review the program and identify strategies for eliminating waste and abuse without eliminating reimbursement for administrative costs.

In New York State, the estimated annual Medicaid reimbursement of \$29 million for transportation services has been important in meeting the federal expectations of providing services to Medicaid-eligible students in very large urban areas as well as in less densely populated areas of the state. The Medicaid Catastrophic Coverage Act of 1988 expressly allows Medicaid to reimburse school districts for state-plan covered services (including transportation) that schools provide pursuant to the Individualized Education Program of Medicaid-eligible children with disabilities. Again, if implemented, the proposed rule change to eliminate transportation reimbursement would increase the financial burden on school districts forced to cover these additional costs.

New York State is a leader in providing the appropriate care and services to its students with disabilities. As we continue to provide services for the most needy of our students, we request that the CMS review carefully the impact of this proposed rule. We stand ready to work with CMS to identify abuse and establish regulations that ensure proper claiming while supporting schools in identifying Medicaid-eligible children, promoting access to Medicaid services, and delivering or arranging for these services. We urge the Centers for Medicare and Medicaid Services to continue investing federal matching funds in efficient and effective school-based Medicaid administrative activities and state-plan covered transportation services.

Thank you for this opportunity to comment on CMS-2287-P. If you have questions or comments on NYSED's position, please contact Mr. Harold Matott by telephone at (518) 474-7116 or by e-mail at [hmatott@mail.nysed.gov](mailto:hmatott@mail.nysed.gov).

Sincerely,



Rebecca Cort

c: Richard Mills  
Theresa Savo  
Michael Albino  
Joan Gavrilik  
Lenton Simms  
Harold Matott

**Submitter :** Dr. Juliann McCarthy  
**Organization :** Dysart Unified School District  
**Category :** Academic

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

We strongly oppose the implementation of this rule change. Schools have become an important and cost-effective provider of essential health services for disabled children. These children are transported to school in small vans with special equipment and/or special staffing to meet their needs. The loss of this funding would severely impact our school district and our ability to provide services to all of our children.

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

**Submitter :** Mr. J. David Williams  
**Organization :** Mr. J. David Williams  
**Category :** Individual

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

The school reimbursement program fits a significant need for supporting medical services now provided by school districts. The transportation and medical reimbursement must not be eliminated to protect the other funds needed to educate all students. Please consider this an urgent matter and keep the reimbursement programs.



**Submitter :** Dr. Paul Tighe  
**Organization :** Dysart Unified School District  
**Category :** Local Government

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

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**Submitter :** Mrs. Wylanta Jones  
**Organization :** Humboldt Unified School District  
**Category :** Speech-Language Therapist

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

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

**Submitter :** Ms.  
**Organization :** Ms.  
**Category :** Academic

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

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**Submitter :** Mrs. Michelle Poole  
**Organization :** Humboldt Unified School District  
**Category :** Physical Therapist

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

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**Submitter :** Ms. Maria Papazis  
**Organization :** Norfolk Public Schools  
**Category :** Speech-Language Therapist

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

GENERAL

see attachment.

CMS-2287-P-951-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

Dear Sir(s) or Madam(s):

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

### **Introduction**

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

### **Major Issues and Concerns**

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

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

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

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

### **Legal Basis for Providing Transportation and Administrative Claiming**

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

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

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

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

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

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

### **Federal Cost Shifting and Reduced Levels of Service**

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

### **Conclusion**

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

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



**Submitter :** Ms. Lauryn Rodriguez  
**Organization :** Monterey County Office of Education  
**Category :** Local Government

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

In regards to our program - The Monterey County office of Education, Alternative Programs, there already exists a great amount of controversy being that our incarcerated facilities are not suppose to \*time survey\*... when in fact the average stay for a juvenile hall student, is only 20 days. What happens to these youth once they leave? I'll tell you. A student transition counselor here at the county office of education, struggles to follow this student, because most of the time, inevitably, this student will return to juvenile hall again, and hopefully grow out of their habits before 18, and transfer to a jail.

Cutting the funding for what? So our president can put bombers in the bottom of our ocean? Cutting the funding for what? So our marines, and soldiers can die, in excess? How many persians have already given their life for nothing? Why are we spending 200 billion to accomodate our president's power trip?

Why are we cutting monies for staff, and ultimately students? We cater to our migrant community by law, but we won't help them with Medi-cal? Who will help them? Not educational staff, should this be cut. Who should help them? Why will they only continue to fund agencies like social services, which only promote LAZINESS.... Educational agencies, promote what??? Education!!!!

It's profoundly ridiculous that administrative activities for Medi-cal will be cut. This kind of time surveying proposes many opportunities, otherwise, that wouldn't be pushed as well, if directors and administration weren't pushing it through the work place.

Who do students idolize and feel they can express themselves to ultimately? Who do students who are in trouble, truly trust? They trust people who provide them with tools... educators. I trust my teachers, many times, teachers are the ones that help our children and students feel better about our selves. Teachers are the ones that are able to truly connect with people because they don't see their students once, in an office. They see their students daily, and over a course of time. Students learn their teachers, just as much as teachers are able to get to know their students. There is true care involved in this process.

How many times have you been able to open up to a therapist on your first visit? How many times have you told your life story to the lady at the grocery store who checks out your groceries? How many times, have you been able to witness true situations come out of a social service meeting, appointment etc. How much trust is assessed this way?

Student-teacher relationships will win by default in this way. Medi-cal administrative activities system of tracking could use some work.... but, to cut the entire funding opportunity, would be a stupid move. Very stupid.

It is my suggestion to revise the system of tracking, if the feds are so scared of abuse in this way, and cut the slackers out. As a marine corps wife, someone who's husband fought for our country, and then getting out of the corps, and trying to get medi-cal ourselves, after a severe bike accident.. i can clearly vouch, that I was not able to get medi-cal because we told the TRUTH about our finances, not only was my husband disabled from a bike accident, but because he was a marine, and receiving federal monies for unemployment, and disability is STATE, and he could not take unemployment because he was injured and you must be able, we rated NOTHING.

Because i was HONEST and living in my grandmothers home, the way that many people are HONEST... we got nothing, and our credit is horrible because of this system. I could care less.

It is my strong opinion that MAA should be saved VS. any social services monies, because students should be in school, and they should be encouraged in this way. I think the cabinet, and board of whoevers making these decisions have quite a time playing power plays, before even thinking about what they are truly ruining for our youth,& future.

**Submitter :** Ms. Rayna Lynn

**Date:** 11/06/2007

**Organization :** HUSD

**Category :** Individual

**Issue Areas/Comments**

**GENERAL**

GENERAL

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

**Submitter :** Ms. Heidi Atkins Lieberman  
**Organization :** Missouri Dept of Elementary  
**Category :** State Government

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

CMS-2287-P-954-Attach-1.DOC

**Re: Comments on Proposed Rule CMS-2287-P**

The Missouri Department of Elementary and Secondary Education (DESE) strongly opposes the Centers for Medicare and Medicaid Services (CMS) proposed rule [CMS-2287-P] to eliminate reimbursement under Medicaid for school administration expenditures and certain transportation costs published in the *Federal Register* on September 7, 2007, and respectfully requests that the CMS not enact the proposed program changes as set forth in proposed rule CMS-2287-P.

Under the proposed rule, schools would be denied reimbursement for mandated, necessary administration services undertaken by school employees or contractors. These changes would create considerable hardships for public schools and further the proposed rule is flawed in that it: 1) contradicts the terms of the statute to allow states flexibility in administering the state Medicaid plan; 2) exceeds Secretarial authority; and, 3) treats schools unfairly.

Further, cutting funding for Medicaid outreach and services in a school setting is neither sound fiscal or social policy. In proposing this rule, CMS will impose a significant financial burden on local school districts, including approximately \$20 million to Missouri's school children in this time period.

More importantly, this rule would create a lost opportunity to reach our most vulnerable children. Every school day, over nine hundred thousand students attend more than 2,000 public schools in Missouri, uniquely situating schools to efficiently reach the majority of disadvantaged youth and their families. If finalized, this rule will impede us from serving these populations.

1.) **Statutory Authority**

Under the federal-state Medicaid program, collaboration with other public agencies is a consistent statutory theme. Collaboration is perhaps most obvious in the case of children, because of the unique requirements of the early and periodic screening, diagnostic, and treatment (EPSDT) benefit, which requires states to perform EPSDT outreach and informing, as well as help Medicaid-eligible children and their families access services.

Schools are and have been a strategic partner in this process. They are ideal places to identify Medicaid-eligible children and connect them to needed services in schools and their communities, since children must attend school and they have access to professional specialists on site. As CMS itself indicated, in its Medicaid School-Based Administrative Claiming Guide, "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."

Because schools are such an effective location for outreach, many state Medicaid programs have entered into interagency agreements with local school systems. These agreements cover a range of activities including outreach, helping families through the Medicaid application process, and providing assistance to arrange necessary health care services for children.

School involvement in the Medicaid program is not only common among states; it is also expressly contemplated in statute. The statute's eligibility determination provisions expressly designate elementary and secondary schools as "qualified entities" for purposes of making presumptive and permanent eligibility determinations in order to afford eligible children and adults the ability to promptly apply for medical assistance and be enrolled. In addition, CMS' own State Medicaid Manual encourages state Medicaid agencies to coordinate EPSDT administrative activities with schools.

Furthermore, with respect to students with disabilities, Congress clearly intended to preclude the Secretary of Health and Human Services (HHS) from denying payment for Medicaid-covered services provided pursuant to a child's Individualized Education Program (IEP). Under the Medicare Catastrophic Coverage Act of 1988 (PL 100-360), school districts are allowed to receive payment from Medicaid as the primary payer for Medicaid services provided to Medicaid-eligible students under the Individuals with Disabilities Education Act (IDEA). Such services may include diagnostic, preventive, and rehabilitative services; speech, physical, and occupational therapies; and, transportation for such services. This proposed rule would expressly contradict the intent of this statute by reversing current policy that allows federal matching funds for transportation provided to children with special health care needs who receive health care services while they are at school.

2.) Secretarial Powers

In its proposed rule, CMS relies on its authority under §1903(a)(7) of the Act to limit federal payments for administrative services to payments "found necessary by the Secretary for the proper and efficient administration of the state plan." In making this assertion, the Secretary of HHS finds that these activities performed specifically by school employees are not "necessary...for the proper and efficient administration of the State [Medicaid] plan."

Secretarial authority in this regard cannot be construed to limit the power of states to administer their plans, or to act in the best interest of beneficiaries, or to involve other agencies in plan administration—which is exactly what this rule would do. Such action constitutes an overstep of Secretarial powers and a willful disregard for Congressional intent. As noted above, Congress itself has involved schools in the administration of plans, therefore, as a matter of law the Secretary cannot find that school administration is improper or inefficient.

In addition, this rationale makes little sense. State Medicaid programs enter into interagency agreements with local school systems precisely because they are effective and efficient locations through which to reach families and provide services. School-based outreach and enrollment activities are successful because they use school staff that are trusted by families and are already in the schools and in contact with children and families. It is inconceivable to think that state agencies would be able to effectively manage a program of this size without relying on local agency personnel to help administer and communicate information about the program.

Secondly, the Secretary's power to deny federal financial participation is tied to the duty of making findings. In this case, CMS points to several audits and the failure of its 2003 Administrative Claiming Guide to halt errors related to school administration claiming. However, the reports of abusive billing that CMS cites took place well before states were required to implement the 2003 guidance. Furthermore, the fact that audits are happening is not a valid basis for halting federal administrative payments. Were audits the basis for such a disallowance, there would be no payment under federal law for any medical assistance costs or state administrative service undertaken by either the state agency or any other agency.

In the world of accounting, audits are a commonplace way of improving the fiscal management of a program, not dismantling it. Negative audit findings should not reverse worthwhile public policies, but rather should inform the process of improving their fiscal

integrity. In issuing this rule, CMS would rather eliminate an entire program than accept responsibility for improving its accountability.

### 3.) Unfair treatment of Schools

The proposed rule treats schools unfairly, as it attempts to disqualify local school districts from receiving Medicaid reimbursement for performing the same activities that other local agencies do in administering the state Medicaid plan. Despite statutory authority, case law, and precedent that establish an irrefutable basis for schools to receive Medicaid reimbursement, CMS seems set on prohibiting schools from receiving federal Medicaid dollars.

In addition, the fact that other federal and local sources of funding exist to help provide health services to students with disabilities does not absolve the federal Medicaid program of its responsibility to provide payment for Medicaid services to Medicaid-eligible students. This issue was clearly decided by Congress with passage of the Medicare Catastrophic Coverage Act of 1988, which allows Medicaid to be the primary payer for Medicaid services for Medicaid-eligible students with disabilities. Schools should not be penalized financially, just because other departments of the federal government also have a responsibility to provide for these children. To propose so, is especially troublesome given that the federal government is woefully behind in its commitment to fund special education. In fact, current funding for IDEA is less than half of what Congress promised three decades ago to states and local school districts to implement this federal mandate.

#### Impact on Services

The loss of federal reimbursement for administrative and transportation services provided by school districts could have a devastating impact on a schools' ability to provide needed services to Medicaid-eligible children. If finalized, this rule will risk poor children not being identified for and receiving needed medical services.

The loss of this funding will have permeating effects on other programs within schools. With Congress failing to fully fund IDEA, Medicaid reimbursement helps districts plug some of these funding holes. In light of this, these cuts will likely impact students in regular education programs since districts are mandated to offer many special education services. This could mean a variety of things—from larger class sizes, to cuts in electives and after school activities, to reductions in teachers and support positions. Otherwise, governments may be forced to replace lost Medicaid dollars by raising state and/or local taxes.

#### Financial Impact

Despite these very real and substantial costs, CMS indicates that this rule will not have a “significant economic impact” on local school districts. This finding is based on the assertion that the estimated cost (\$635 million in 2009) of the rule is only “about one eighth of one percent of the total annual spending on elementary and secondary schools” and therefore does not meet the 3 to 5 percent threshold of annual revenues or costs in determining whether a rule has a “significant” economic impact.

This rationale is flawed for a couple of reasons. As CMS clearly knows, not all school districts currently claim or receive FFP for administrative and transportation services. Federal funding is spread unevenly between states, among districts, and between elementary and secondary schools. Therefore, to compare the cost of the proposed rule to overall nationwide spending for elementary and secondary education minimizes its

financial impact. Additionally, a large percentage of school districts' budgets are largely fixed due to contractual obligations and operational costs. Therefore, discretionary funds such as Medicaid reimbursement dollars have a much more significant impact on the availability of resources than if all aspects of a district's budget were flexible.

A more realistic financial analysis would: 1) examine the financial impact of the proposed cuts only on districts that actually claim for reimbursements; 2) take into consideration the unique aspects (such as fixed costs) of school districts budgets; and, 3) include the likely loss of state Medicaid funding that would result from schools no longer being able to sustain these programs.

#### Conclusion

Unfortunately, this rule illustrates a retreat from supporting the health needs of our most vulnerable children. DESE urges CMS to rescind this proposal and to reaffirm its commitment to low-income and disabled children by continuing to invest in school-based administrative and transportation services. In order to ensure that low-income children are enrolled in Medicaid and are able to access the health care services that they need, schools must be a valued partner in the process. It is in society's best interest to ensure that they are healthy and able to learn.

Thank you for this opportunity to comment on CMS-2287-P.

Heidi Atkins Lieberman, Assistant Commissioner  
Division of Special Education  
Missouri Department of Elementary and Secondary Education  
573-751-5739  
[Heidi.atkinslieberman@dese.mo.gov](mailto:Heidi.atkinslieberman@dese.mo.gov)



**Submitter :** Mrs. Kim Rice  
**Organization :** Cottonwood-Oak Creek School District  
**Category :** Academic

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

Under the current proposal, program funding for public school districts providing services and support for students who are medically, as well as educationally, challenged will be eliminated. In the state of Arizona, reimbursements for administrative and outreach activities amounted to about \$4 million in FY 2007. Reimbursements for transportation services amounted to about \$7.7 million. This funding support is critical for rural Districts like ours to continue to provide appropriate services to children with disabilities. Please reconsider the proposal to eliminate the funding.

**Submitter :** Deborah Rogers

**Date:** 11/06/2007

**Organization :** Mendocino County Office of Education/SELPA

**Category :** Individual

**Issue Areas/Comments**

**GENERAL**

**GENERAL .**

Please save the Medicaid reimbursement for Schools! This funding provides crucial health services for our students with disabilities. Thanks for doing the right thing!

**Submitter :** Ms. Barbara Cochran  
**Organization :** Petaluma City Schools  
**Category :** Individual

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

The medical monies collected assist us in providing services to children and their families. Schools are not just for "education", as is obvious when one looks at the population of students on the Autistic Spectrum, those dealing with psychological challenges, and those of various needs impeding their ability to benefit from their education. We are highly underfunded. There simply are not sufficient community resources to served those who need to be served, nor medical insurance for parents to draw upon, particularly in the mental health areana. While education is our general and biggest concern, our students have to be in a position to be open to education. And, education would be highly unresponsive to the needs of students, if it did not include at least some education about how to get along with people. When parents have not provided this education for their children, and when there are specific and unusual needs (Autistic Spectrum), more time and a variety of different approaches are needed to assist the student in succeeding in school and in their futures.

We need all the resources we currently receive through Medical re-imbursments, as well as more we don't have. The value of early intervention, and attention to mental health needs of our students is basic to our ability to contribute to the wellness of future adults.

**Submitter :** Ms. Ellen Schwartzberg  
**Organization :** Norfolk Public Schools  
**Category :** Occupational Therapist

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

GENERAL

see attachment

CMS-2287-P-958-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 :** Ms. Christine Decatur  
**Organization :** New York State School Boards Association  
**Category :** Other Association

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

See attachment



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

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