

**Submitter :** Ms. Janna Hayes  
**Organization :** Vilonia School District  
**Category :** Academic

**Date:** 11/06/2007

**Issue Areas/Comments**

GENERAL

GENERAL

"See Attachment"

# 990

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

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

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

**Submitter :** Mrs. Kathryn Walker  
**Organization :** Ventura Unified School District  
**Category :** Local Government

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

The MAA program has allowed me as a district Elementary School Office Manager to learn about what type of Medical Insurance is available for our families. We have been able to make our teacher aware of the benefits of this program and they now are sending parents to our office when they see a medical need that may need insurance coverage. We have developed a Provider Resource Guide that is available again for our families to see which doctors and dentists are available using Healthy Families Insurance. Prior to this program this information was not as readily available at our school site. We have resources that help the families with the actual application preparation. I now provide this information in all of our registration packets, always checking to be sure that children have some type of insurance available to them. This program has been a tremendous advantage to our students and their parents.

I would hate to see this component of the program discontinued. Schools are the perfect place for families to come when they have a need and it is very rewarding to be able to give them good information regarding medical and dental insurance. With our emphasis on a healthier live style - eating right, exercising and having regular physical and dental check-ups, Healthy Families is a great partner. As we always say, "Healthy kids make better students".

Please do not eliminate the reimbursement provided for MAA expenditures. It is my plesure to be able to support our community with this information, however, it does take time away from the actual duties that we usually do within our office; however, the benefits of the program completely out weight the negative.

**Submitter :** Dr. Florene Bednersh  
**Organization :** Santa Barbara County Education Office  
**Category :** Other Government

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

To Whom It May Concern:

I am writing to oppose CMS Rule 2287-P. It is extremely important that we maintain school-based Medicaid administrative claiming. Schools are critical gateways to health care for students and families. School based administrative claiming facilitates the distribution of Medicaid information and services to otherwise neglected portions of our population. Schools have a unique role and an inherent trust relationship with students and families. This connection is irreplaceable. Schools facilitate Medicaid goals economically since they make use of existing staff and their relationships with students and families.

In addition, my office serves over 2000 students with special education needs. The promise of funding for special education services from our government has never been met. School-based Medicaid funding allows us to reach out to ensure that these students get the medical services to which they are entitled.

Education is not the only role that schools play in a child's life. Children walk through school doors without housing, food, or health care. Legislators know this and have emphasized schools as 'one-stop shop' for education, health and social services.

Medicaid administrative reimbursement is an investment that pays substantial social and economic dividends. Before CMS cuts funding to school districts for school based administrative claiming, it should reconsider the unique role played by schools in providing medical access and specialized services to our students and families.

Thank you for your consideration.

**Submitter :** Mrs. Keisha Alexander

**Date:** 11/06/2007

**Organization :** Norfolk Public Schools

**Category :** Social Worker

**Issue Areas/Comments**

**GENERAL**

GENERAL

"SEE ATTACHMENT"

#993

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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.

**Submitter :**

**Date: 11/06/2007**

**Organization :**

**Category : Physical Therapist**

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

With this money it allows related service staff to attend pertinent workshops to keep up to date in providing quality service to eligible students in our educational system. It also provides needed technology and materials to better educate our students. Please consider the ramifications of such a decision.

**Submitter :** Mr. James Haugen

**Date:** 11/06/2007

**Organization :** Mr. James Haugen

**Category :** Individual

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

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

School districts provide important outreach services for all children, providing information on Medicaid eligibility and services. They also provide essential and cost-effective care coordination for children with severe disabilities. This cut would impact not only funding but also services to families.



**Submitter :** Mr. J. Terry Downen  
**Organization :** School District of Colby, Colby WI  
**Category :** Local Government

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

In 1998 Wisconsin implemented its Medicaid Administrative Claiming system for its schools and it has worked well. CMS signed off on this state-local arrangement without historical exception - the practice has been reviewed and approved. Section 1903(w)(7)(G) supports this state-local arrangement. It is clearly Congressional intent through Public Law 100-360 that Medicaid reimbursement should not be refused for activities performed in school settings.

A real loss of benefit (\$12 million) will be suffered under CMS-2258P for the most vulnerable children in our state. We need to provide assistance to our neediest, including the children in our schools and not deprive them of programs, which could occur if this funding is removed.

**Submitter :** Mrs. carolyn kuns  
**Organization :** Humboldt Unified School District  
**Category :** State Government

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

We have seen new legislation each year, but can not effectively do service to these programs without the funding to help us do this work. Cutting funding in this area will affect our being able to help special students in these areas.

Please consider this before you eliminate such an important reimbursement for special education.

Thank you for letting me voice my opinion.

**Submitter :** Mrs. Margarita Aguirre  
**Organization :** Guadalupe Family Service Center  
**Category :** Individual

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

GENERAL

see attachment

CMS-2287-P-998-Attach-1.DOC



## G u a d a l u p e U n i o n S c h o o l D i s t r i c t



❖ ❖ ❖ ❖ ❖ ❖ ❖ Family Services Center ❖ ❖ ❖ ❖ ❖ ❖

4681 Eleventh St.  
Guadalupe, CA. 93434  
(805) 343-1194

November 8, 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

Re: Opposition to proposed rule CMS-2287-P

Dear Center for Medicare and Medicaid Services,

I am writing today to let you know that I am opposed to CMS-2287-P, I feel that it is a bad policy and could result in increased cost through missed opportunities to get kids covered by health insurance and connected to services they need before health issues become catastrophic.

Further, contrary to CMS' statement that school-based MAA is "not necessary for the proper and efficient administration of the State plan," today's schools and their staff are *the* primary source of information and referral for families on a wide range of services including those covered by the Medicaid program. Parents trust and depend on school staff for information on everything from housing to food to health services and since virtually all children attend school it is absolutely a "proper and efficient" system to utilize.

In their proposed rule, CMS tries to make the case that all activities and services performed by school district staff simply support educational programs, overlap with educational programs, or are required by IDEA, and therefore don't directly or specifically benefit the Medicaid program. In fact, we know that every day school staff assists students in extraordinary ways that go above and beyond educational programs. For example, in our small Guadalupe Union School District, we enrolled 358 children into MediCal, Healthy Families and Healthy Kids Programs this year alone. In addition, we provide free dental screenings for 1200 children per year and then connect them with insurance programs and dental providers. We are able to provide translation at IEP, SST Meetings where we have numerous opportunities to provide outreach to parents who otherwise be unaware of the health services and programs available to them. We are able to connect numerous children to Mental Health program, arrange transportation, etc. etc.. And lastly, with our Medical reimbursement funds were able to fund a Licensed Counselor, who is able to see our students on site.

In the area of specialized transportation, CMS justifies that "students receive transportation from home to school and back regardless of whether or not they are determined eligible for special education services." Therefore, specialized transportation services should not be reimbursable through the LEA program. However, the cost of providing specialized transportation – either in a wheel chair accessible vehicle or litter van – is significantly more expensive than transportation provided to regular education students.

Sincerely,  
**Margarita Aguirre**

**Submitter :** Stan Rosenstein  
**Organization :** California Department of Health Care Services  
**Category :** State Government

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachments

CMS-2287-P-999-Attach-1.PDF

CMS-2287-P-999-Attach-2.PDF



SANDRA SHEWRY  
Director

State of California—Health and Human Services Agency  
Department of Health Care Services



ARNOLD SCHWARZENEGGER  
Governor

November 6, 2007

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

Dear Sir or Madam:

The Department of Health Care Services (DHCS), on behalf of the State of California, appreciates this opportunity to comment on the proposed regulation changes. Please find attached California's comments in response to the Notice of Proposed Rule Making (NPRM) (CMS-2287-P) published at 72 Fed. Reg 173 (September 7, 2007). The NPRM proposes amendments to 42 C.F.R. Parts 431, 433, and 440.

Overall, we find CMS's proposal to eliminate all Medicaid administrative funding for all schools due to funding problems with a few schools to be a misguided approach to solving these problems. Rather than arbitrarily eliminating all funding, CMS should focus its efforts on working with states to ensure proper claiming.

Schools perform critical administrative activities, including outreach and enrollment of children into Medicaid. CMS has placed great focus on enrolling eligible but unenrolled children into Medicaid and S-CHIP and CMS's action here to cut funding for schools to enroll children contradicts CMS's position that states should enroll eligible children.

Because children attend school, schools are a logical place for states to focus enrollment activities to meet our mutual goal of enrolling all eligible children. To accomplish this, schools must be funded for these activities. To take the position, as CMS does, that states should send eligibility workers to every school open house or parent event does not reflect the reality of the volume or number and variety of events that occur nor the logistics that would be involved in replacing the use of school employees to do outreach with state or county eligibility workers.

Beyond the impossible logistics involved, states would have to hire thousands of eligibility workers to do this work, at far greater cost than the cost of funding schools to do outreach and assist in completing applications. It is far more logical to have schools include enrollment into Medicaid as a feature of their school events and reimburse schools for these activities. To accomplish CMS's goal of enrolling eligible children into Medicaid, it is vital that schools receive funding to do this work.

California has operated its school-based programs in close collaboration with CMS following very strict CMS guidelines. The State and CMS have worked together to resolve any problems that have come up and ensure proper claiming. In 2003, CMS issued its School-Based Administrative Claiming Guide, which states and schools were to follow in claiming. There has been no CMS review or evaluation of state compliance with this Guide, and there is no evidence that states are abusing it. Without evidence on how well CMS's current guidance is working, there is no basis to eliminate this funding.

Our more detailed comments are enclosed and cover a number of issues raised by the proposal. In addition to this letter, we have enclosed five specific areas of comment for your consideration. The areas of comment include:

- The negative impact the resulting loss of federal financial participation (FFP) would have on the health of Medicaid-eligible children who receive or are referred to necessary health care services, including transportation, by their public school personnel.
- The fiscal impact the proposed rule would have on school districts to provide necessary school-based health care.
- The reversal of recent federal guidance on school participation in Medicaid claiming and contradictions of federal definitions of "governmental units" and "local governments" that may participate in Medicaid claiming.
- The increase in administrative costs of states and schools by requiring additional interagency coordination between school districts.
- The basis for these proposed regulations on audit findings that are as much as ten years old and that do not represent current claiming practices.

The Centers for Medicare & Medicaid Services

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November 6, 2007

If you have any questions, or if we can provide further information, please contact me at (916) 440-7400.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stan Rosenstein', with a stylized flourish at the end.

Stan Rosenstein  
Chief Deputy Director  
Health Care Programs

Enclosure

cc: See Next Page



**The Centers for Medicare & Medicaid Services**

**Page 4**

**November 6, 2007**

**cc: Mr. Dave Lucas  
Deputy Director  
Office of Governor Arnold Schwarzenegger  
Hall of the States, Suite 134  
444 North Capitol  
Washington, D.C. 20001**

**Mr. Joe Munso  
Deputy Secretary  
Office of Program and Fiscal Affairs  
California Health and  
Human Services Agency  
1600 Ninth Street, Room 460  
Sacramento, CA 95814**

**Mr. Bob Sands  
Assistant Secretary  
Office of Program and Fiscal Affairs  
California Health and  
Human Services Agency  
1600 Ninth Street, Room 460  
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**Anthony Lewis, Esq.  
Assistant Chief Counsel  
Office of Legal Services  
Department of Health Care Services  
1501 Capitol Avenue, MS 0010  
P.O. Box 997413  
Sacramento, CA 95899-7413**

**Ms. Nancy Hutchison, Chief  
Safety Net Financing Division  
Department of Health Care Services  
1501 Capitol Avenue, MS 4504  
P.O. Box 997413  
Sacramento, CA 95899-7413**

## **Proposed Regulations: Elimination of Reimbursement under Medicaid for School Administration Expenditures and Costs Related to Transportation of Students between Home and School (CMS-2287-P)**

The State of California has actively participated with CMS in developing its School Medi-Cal Administrative Activities (SMAA) program in compliance with federal requirements. Administrative activities performed in school settings must be associated with or in support of the provision of Medicaid services. These include:

1. Services specified in an Individualized Education Plan (IEP) and Individual Family Service Plans (IFSP).
2. Specific primary and preventive services provided in those schools by providers who may also bill non-Medicaid children.

Other administrative activities not associated with a covered Medicaid service may be covered, including Medicaid outreach and referral; facilitating Medicaid application; and providing Medicaid-related training, translation, and general administration. Many schools provide their students with a wide range of health care and related services, the costs of which may or may not be reimbursable under the Medicaid program.

These programs are reviewed regularly by staff from three levels of government: the school, the local (regional) educational consortium, and the State. The negative findings described in this rulemaking do not apply to the State of California.

### **Comments from the State of California**

- 1. The State of California strongly objects to these proposed regulations based upon the negative impact the resulting loss of federal financial participation (FFP) would have on the health of Medicaid-eligible children who receive or are referred to necessary health care services, including transportation, by their public school personnel.**

The proposed rule from the federal Centers for Medicare and Medicaid Services (CMS) asserts that SMAA does not constitute “the proper and efficient administration of the state plan” when performed by school personnel. The rulemaking asserts that SMAA and home-to-school transportation (as an administrative activity and as medical assistance) is meant only to fulfill an educational purpose, not a medical purpose. The rulemaking states that only employees of a state or local Medicaid agency are capable of performing SMAA and home-to-school medical transportation in compliance with the Medicaid statute.

This assertion conflicts with the facts of the historical collaborations between state and federal educational and medical staff that resulted in the inclusion of school districts in the provision of necessary health care services to Medicaid-eligible persons. If schools lose federal reimbursement of costs of their administrative

activities, they may not be able to fund the staff positions that perform Medicaid administrative activities. These administrative activities are not part of the administrative activities associated with service rates, yet without them children and their families will experience greater difficulty in learning about and accessing Medicaid services. School districts are allowed to participate in the Medicaid program by the Social Security Act (SSA), Office of Management and Budgets Circular A-87 (OMB A-87), State Medicaid Directors letters, the federal 2003 Medicaid School-Based Administrative Claiming Guide (2003 School-Based Guide), and other policy documents, as detailed in this paper. The appropriate right of schools to participate in Medicaid is consistent with the need for schools to perform SMAA. SMAA facilitates students' access to necessary medical services.

Federal law and guidance describes SMAA and home-to-school medical transportation as necessary means of helping low-income persons to access necessary health care services. This rulemaking would arbitrarily and capriciously reverse these legal and historical precedents. Furthermore, redefining administrative activities as only those that are included as an inherent part of service rates may prevent the performance of Medicaid administrative activities to the extent currently provided by school personnel.

Health care providers and educators began to develop methods of providing necessary health care services through schools partially in response to requirements of the Education for All Handicapped Children Act of 1975 (EHA), renamed the Individuals with Disabilities Education Act (IDEA—last amended in 2004).<sup>1</sup> As increasing numbers of children suffer from chronic ailments,<sup>2</sup> the need for school-based health care becomes even more important—not only to the school system but to preservation of a healthy workforce.

Because children are typically in school five days per week to receive an education, teachers and other school staff have daily contact with children, providing the opportunity for school staff to appropriately direct children to health care services when needed. This regular contact allows school personnel to be more effective and efficient than state and local Medicaid agency staff in helping children access necessary health care. SMAA helps millions of children access available health care, assists many families in applying for Medicaid, and provides access to transportation and translation services that enable families to receive necessary health care services.

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<sup>1</sup> Title 20 of the United States Code, Section 1400 et seq.

<sup>2</sup> Centers for Disease Control and Prevention, <http://www.cdc.gov/HealthyYouth/asthma/index.htm>; and the California School Health Centers Association, <http://www.schoolhealthcenters.org/>

Transportation. Medical transportation is a Medicaid service available to children who qualify for services under IDEA and who are Medicaid beneficiaries. Title 42 of the United States Code (U.S.C.) Section 1396b(c) allows Medicaid to be primary to the U.S. Department of Education for payment of the health-related services, including transportation, provided under IDEA.<sup>3</sup> Such needs are identified, and specific treatments are prescribed, on children's individualized educational plans (IEP) or individualized family service plans (IFSP).

CMS asserts that schools are required to provide home-to-school transportation for their students and that reimbursement for the costs of such transportation duplicates the statutory obligation of the educational program. There is no State or federal requirement for schools to provide home-to-school transportation for all students. California schools are obligated to provide transportation to students only when transportation is specified in a student's IEP or IFSP, as required by IDEA.

CMS will continue to allow claims for children to receive school-based services, including home-to-school transportation, when required by an IFSP. This exception reveals that CMS acknowledges the potential for schools to provide Medicaid services and perform Medicaid activities not solely to serve "an educational purpose." Without federal funding of home-to-school medical transportation and SMAA, schools will find it increasingly difficult to help low-income families access Medicaid services. An end to Medicaid funding of SMAA and home-to-school medical transportation will at minimum create a gap in necessary services and activities while schools attempt to replace that funding through other funding sources.

Medical transportation is based on 42 U.S.C. §1396b(c), 42 U.S.C. §1396d(a)(28), 42 CFR §431.53, and 42 CFR §440.170(a). Transportation as a service is also defined in California's federally approved "State Plan for Assurance of Transportation" (trans. 83-10, eff. 7-1-83) and in the 2003 School-Based Guide. Nonetheless, CMS intends to modify its policy concerning this statutory Medicaid service. Although the proposed rulemaking confirms the availability of medical transportation when it is from a school to a medical provider, the rule ignores the needs of many students with disabilities who require medical (specialized) transportation between home and school to facilitate frequent contact with school-based Medicaid service providers, including auditory specialists, occupational therapists, speech therapists, psychologists, and licensed medical staff. Many students suffer from chronic health conditions that are most cost-effectively treated in the course of the school day.

Eliminating FFP for transportation places an undue burden on schools already hard-pressed even to provide for basic educational materials. The great strides in school-based health care made over the last 30 years in low-income communities would easily be reversed by such abrupt and ill-considered rulemaking.

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<sup>3</sup> 42 U.S.C. §1396b(c).

**2. CMS inaccurately minimizes the fiscal impact the proposed rulemaking would have on school districts to provide necessary school-based health care. In regard to these costs, CMS states:**

The estimated annual Federal savings under this proposed rule ... is only about one eighth of one percent of total annual spending on elementary and secondary schools....We use a threshold of 3 to 5 percent of annual revenues or costs in determining whether a proposed ... rule has a 'significant' economic impact on small entities."

It is misleading and inaccurate for CMS to compare the cost of school-based health care to the entire budgets for K-12 education. Rather than "one eighth of one percent of total annual spending," the proposed rule would impose a 50-percent economic impact on these school-based programs—far beyond the "3 to 5 percent" allowable limits established by the Regulatory Flexibility Act of 1993, cited in the proposed rulemaking. The loss of this 50 percent of FFP would have a substantial and negative impact on the ability of California to care for its neediest children in the timely and cost-effective manner that is allowed through the SMAA program.

During state fiscal year 2006-07, California schools spent over \$223 million performing SMAA and received \$111 million in FFP. Schools would not likely be able to replace such funding if it were taken away. Additionally replacing school-based staff with Medicaid agency staff imposes additional administrative costs on schools related to coordinating such activities. The proposed rule is neither effective nor efficient in assisting needy children and their families in accessing necessary health care. The elimination of the SMAA program would decrease the administrative efficiency of Medicaid providers that might treat these children by adding substantial administrative burdens to their services.

With approximately 760,000 uninsured children less than 18 years of age in California, loss of this federal support can only serve to increase the many barriers these persons encounter in their efforts to grow and learn. When parents lack language skills, transportation, or information about available health care, school personnel are often children's only source of contact with professional caring adults who can direct them to necessary and cost-effective health care services. Unless schools can help students reach necessary medical services through the proper and efficient performance of administrative activities, it is likely that many will suffer increasing health problems that can result in chronic conditions that will cost public agencies far more than it would have cost to direct them to treatment when they were in school. Without such funding, schools will not have staff available to provide such guidance and children will not receive the treatment they need.

**3. The State of California strongly objects to these proposed regulations because they arbitrarily and capriciously reverse recent federal guidance on school participation in Medicaid claiming and contradict federal definitions of “units of government” and “local governments” that may participate in Medicaid claiming.**

- a. State Medicaid Director Letter, dated May 21, 1999, affirmed that “Medicaid is the payer of *first* resort for medical services provided ... pursuant to IDEA.” The letter describes certain limitations on such claims, particularly that services may be claimed “that a child would not otherwise receive in the course of attending school.” Transportation to and from home is available for students only on days “when the child receives a medical service ... that is listed in the IEP [individualized educational plan] as a required service.” The Department of Health and Human Services’ (DHHS’s) support of these services implicitly requires equal support for administrative activities related to these services.
- b. CMS’s Medicaid School-Based Administrative Claiming Guide, dated May 2003. While schools are legally liable to provide IDEA-related health services at no cost to eligible students, Medicaid reimbursement is available for these services because section 42 U.S.C. §1396b(c) requires Medicaid to be primary to the U.S. Department of Education for payment of the health-related services provided under IDEA. Medicaid covers services included in an IEP under the following conditions:
  - i. The services are medically necessary and included in a Medicaid-covered category (speech therapy, physical therapy, etc.);
  - ii. All other federal and state Medicaid regulations are followed, including those for provider qualifications, comparability of services and the amount, duration and scope provisions;
  - iii. The services are included in the state’s plan or available under the federal Early and Periodic Screening, Diagnosis, and Treatment program (EPSDT); and
  - iv. The medical service must be provided to a Medicaid eligible student.
- c. Office of Management and Budgets Circular A-87 (OMB A-87). CMS asserts that SMAA and home-to-school transportation should be eliminated because federal statutes do not specify that schools are equivalent to units of government. CMS “believes” that the absence of such statutory language would allow the Secretary of DHHS to exercise the right to arbitrarily regulate the Medicaid program, without regard to legal and historical precedent, by determining that SMAA and transportation are not claimable when performed by school personnel. However, schools are clearly considered in federal guidance on cost accounting to be units of government. OMB A-87 includes “school districts” as “local governments” eligible to participate in federal awards:

(B) 13. "Governmental unit" means the entire State, local, or federally-recognized Indian tribal government, including any component thereof. Components of governmental units may function independently of the governmental unit in accordance with the term of the award.

(H) (B) 16. "Local government" means a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (whether or not incorporated as a non-profit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

As units of government, school districts are referred to by all Medicaid statutes as are other units of government.

- d. Unless CMS intends to request revisions to the OMB definitions, the rulemaking will contradict them. CMS has revised the Code of Federal Regulations (CFR) at 42 CFR §§433.50 and 433.51 to define the term "unit of government" in a way that might exclude schools from Medicaid participation. However, enforcement of these provisions was placed on moratorium by Congress until October 1, 2008. In addition, several states are currently challenging these regulations in federal court. CMS's arbitrary and capricious efforts to eliminate SMAA and home-to-school medical transportation reverse 30 years of federal law and guidance. California strongly opposes this effort.

#### **4. The proposed rule would increase administrative costs of states and schools by requiring additional interagency coordination between school districts.**

CMS affirms that FFP "will not be available for school based administrative and certain transportation costs unless conducted by employees of the State or local Medicaid agency." This provision may severely impair the well-established practice of school personnel to perform Medicaid administrative activities toward children and their families. The elimination of federal reimbursement of the costs of these activities would result in the loss of school personnel positions; the educational staff that would remain possess neither the time nor training to perform these administrative activities.

If only state or local Medicaid agencies are eligible for reimbursement of the costs of administrative activities performed at a school site, the staff of these agencies will need to work on the school campus. This would require additional school expenditures to cover facilities costs, fingerprinting, and background checks, thereby decreasing the efficiency of the proposed rule. The physical distance of these staff from their host Medicaid agency administrations would increase the complexity of supervising the staff and decrease the effectiveness of their efforts.

This arbitrary and capricious rulemaking would reduce the ability of states to conduct Medicaid administrative activities, which would reduce students' access to necessary services and the ability of schools to support the health of their students.

Funding should not be denied for an otherwise valid Medicaid expenditure just because it is associated with schools. This rulemaking is neither effective nor efficient, and it imposes a substantial administrative and financial burden on state and local governments.

- 5. CMS has based these regulations on audit findings that are as much as ten years old and do not represent current claiming practices. The proposed rule refers to negative audit findings from a few states without indicating the prevalence CMS has found of such practices among all states. They do not describe the efforts CMS and the few offending states have taken since those audits to remediate noncompliance. And they do not describe the lessons compliant states have learned and put into practice from having learned of those few audits. Furthermore, CMS has not conducted compliance audits on school based administrative activities that have been conducted using the 2003 School-Based Guide.**

Referring to negative audit findings for a few states from the 1990s, CMS explains its intention with the proposed rule to abolish SMAA for all states. Notably, both reports of the Governmental Accounting Office (GAO) cite:

HCFA guidance has been insufficient and its reviews of districts' claims activities uneven. As a result, what is submitted by states is approved by some HCFA regional offices ... and is denied by others .... These weak controls permit an environment for opportunism in which inappropriate claims could generate excessive Medicaid payments.

The April 2000 GAO report indicates that states continued to be subjected to inconsistent guidance from CMS's ten regional centers. Referring to how these audits were resolved, the report states:

We are making recommendations to the Administrator of HCFA that are aimed at improving the development and consistent application of clear policies and appropriate oversight for school-based Medicaid services. Additionally, we are referring evidence of certain improprieties and other matters to the cognizant U.S. Attorney's Offices for appropriate action.

By issuing guidance without actually following up on its audit findings, CMS will continue to provide states with inconsistent guidance. Regions that participate in audits will get current guidance, while other regions will continue to base their activities on older guidance. It is premature for CMS to reverse such recent guidance as the 2003 School-Based Guide and to propose such restrictive rulemaking when CMS has not yet fulfilled its own responsibility to conduct appropriate, consistent, and complete oversight and to provide reliable localized guidance.

Furthermore, the audit findings do not indicate how audited states responded to the negative findings. The few negative audit findings referred to in the proposed



rulemaking do not establish an appropriate basis to eliminate a nationwide program like SMAA. Without additional information, CMS might not realize the positive effect these audits might have had in bringing these and other states into compliance with federal law. State and local governments may depend on such audits to receive individualized guidance from federal authorities. CMS should not diminish its responsibility to conduct and follow up on its audits throughout the nation by the elimination of an entire program.

**Submitter :** Ms. Kate Lerner  
**Organization :** MN Association of County Social Service Admin.  
**Category :** Health Care Professional or Association

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

CMS-2287-P-1000-Attach-1.DOC



## Minnesota Association of County Social Service Administrators

### PRESIDENT

**Kathleen Johnson**  
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### PRESIDENT-ELECT

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### DIRECTOR & LEGISLATIVE LIAISON

**Kate Lerner**  
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[lerner@mncounties.org](mailto:lerner@mncounties.org)

November 6, 2007

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

RE: File code CMS-2287-P

Dear Centers for Medicare and Medicaid Services:

On behalf of the Minnesota Association of County Social Service Administrators (MACSSA), we are writing to express opposition to the proposed rule that the Center for Medicare and Medicaid Services (CMS) announced on September 7, 2007. This proposed rule would eliminate Medicaid reimbursement for administrative costs for services provided to students with disabilities. We urge you to withdraw implementation of the proposed rule since we believe promulgation will be harmful to the most vulnerable of our school districts' children - those with disabilities who are also members of low-income families.

Minnesota's innovative approach to delivering and integrating services and planning for children and their families created and funded 95 Family Service and Mental Health Collaboratives throughout the State. As recently as 2005, 87 counties, 340 school districts, 69 public health agencies, 74 correction agencies and numerous private, non-profit service providers worked together to claim and utilize \$44.9 million (\$22.5 million Federal share) in Medicaid school-based administrative funds to increase and improve services to children and families in need.

Programs have included services ranging from immunization to truancy prevention services, from family support to chemical dependency services, from co-located school based services to mental health interventions for severely emotionally disturbed children. Collaboratives were envisioned as a means to do the following:

- Address the needs of children faced with complex problems with multiple interrelated causes and effects.
- Maximize impact and resources by enhancing coordination among systems and reducing duplication.
- Involve citizens, especially families, in the system redesign and implementation, so that their needs were effectively met.

As funding for these innovative and collaborative services is reduced, many predict an increase in the high cost services that early intervention and prevention has prevented: costly inpatient services, increased out-of-home costs, and an increased number of children failing in school.

We are concerned that this rule will reduce the availability of, and access to, needed health care for these students. Medicaid reimbursement for administrative services is critically important to ensure that schools are able to provide appropriate outreach activities that link children to medical services, identify those students who may need medical screening, and provide referral services in the community.

We believe this proposed rule prohibiting schools from claiming these expenses would contradict existing law and seriously impede the ability of states and school districts to provide these services. Major reductions in Medicaid reimbursements will severely restrict the ability of Minnesota's family services and mental health collaboratives, in coordination with local school districts, to provide much-needed mental health care services to disabled children.

We urge you to reconsider implementing this proposed administrative change and to work with states and school districts to ensure that all children receive the health services that they deserve. Without access to appropriate health care, children with disabilities will experience additional challenges in their efforts to make progress towards leading healthy and productive lives.

Thank you for your time and consideration.

Sincerely,

Kathleen Johnson, President  
MN Association of County  
Social Service Administrators

Kate Lerner, Executive Director  
MN Association of County  
Social Service Administrators

cc: Cal Ludeman, MN Department of Human Services Commissioner  
Christine Bronson, Minnesota Medicaid Director  
Glenace Edwall, Director, MN Department of Human Services Children's Mental Health Division  
Minnesota's U.S. Congressional Delegation  
Association of Minnesota Counties  
MACSSA Membership

**Submitter :** Mrs. Anna Downing

**Date:** 11/06/2007

**Organization :** Mrs. Anna Downing

**Category :** Individual

**Issue Areas/Comments**

**GENERAL**

GENERAL

see attachment

CMS-2287-P-1001-Attach-1.DOC

November 8, 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

Re: Opposition to proposed rule CMS-2287-P

Dear Center for Medicare and Medicaid Services,

I am writing today to let you know that I am opposed to CMS-2287-P, I feel that it is a bad policy and could result in increased cost through missed opportunities to get kids covered by health insurance and connected to services they need before health issues become catastrophic.

Further, contrary to CMS' statement that school-based MAA is "not necessary for the proper and efficient administration of the State plan," today's schools and their staff are *the* primary source of information and referral for families on a wide range of services including those covered by the Medicaid program. Parents trust and depend on school staff for information on everything from housing to food to health services and since virtually all children attend school it is absolutely a "proper and efficient" system to utilize.

In their proposed rule, CMS tries to make the case that all activities and services performed by school district staff simply support educational programs, overlap with educational programs, or are required by IDEA, and therefore don't directly or specifically benefit the Medicaid program. In fact, we know that every day school staff assists students in extraordinary ways that go above and beyond educational programs. For example, in our small Guadalupe Union School District, we enrolled 358 children into MediCal, Healthy Families and Healthy Kids Programs this year alone. In addition, we provide free dental screenings for 1200 children per year and then connect them with insurance programs and dental providers. We are able to provide translation at IEP, SST Meetings where we have numerous opportunities to provide outreach to parents who otherwise be unaware of the health services and programs available to them. We are able to connect numerous children to Mental Health program, arrange transportation, etc. etc.. And lastly, with our Medical reimbursement funds were able to fund a Licensed Counselor, who is able to see our students on site.

In the area of specialized transportation, CMS justifies that "students receive transportation from home to school and back regardless of whether or not they are determined eligible for special education services." Therefore, specialized transportation services should not be reimbursable through the LEA program. However, the cost of providing specialized transportation – either in a wheel chair accessible vehicle or litter van – is significantly more expensive than transportation provided to regular education students.

Sincerely,  
**Anna Downing**

**Submitter :** Ms. Kathleen Johnson

**Date:** 11/06/2007

**Organization :** MN Association of County Social Service Adm

**Category :** Health Care Professional or Association

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

CMS-2287-P-1002-Attach-1.DOC



**Minnesota  
Association of  
County Social  
Service  
Administrators**

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**DIRECTOR & LEGISLATIVE LIAISON**

**Kate Lerner**  
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[lerner@mncounties.org](mailto:lerner@mncounties.org)

November 6, 2007

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

RE: File code CMS-2287-P

Dear Centers for Medicare and Medicaid Services:

On behalf of the Minnesota Association of County Social Service Administrators (MACSSA), we are writing to express opposition to the proposed rule that the Center for Medicare and Medicaid Services (CMS) announced on September 7, 2007. This proposed rule would eliminate Medicaid reimbursement for administrative costs for services provided to students with disabilities. We urge you to withdraw implementation of the proposed rule since we believe promulgation will be harmful to the most vulnerable of our school districts' children - those with disabilities who are also members of low-income families.

Minnesota's innovative approach to delivering and integrating services and planning for children and their families created and funded 95 Family Service and Mental Health Collaboratives throughout the State. As recently as 2005, 87 counties, 340 school districts, 69 public health agencies, 74 correction agencies and numerous private, non-profit service providers worked together to claim and utilize \$44.9 million (\$22.5 million Federal share) in Medicaid school-based administrative funds to increase and improve services to children and families in need.

Programs have included services ranging from immunization to truancy prevention services, from family support to chemical dependency services, from co-located school based services to mental health interventions for severely emotionally disturbed children. Collaboratives were envisioned as a means to do the following:

- Address the needs of children faced with complex problems with multiple interrelated causes and effects.
- Maximize impact and resources by enhancing coordination among systems and reducing duplication.
- Involve citizens, especially families, in the system redesign and implementation, so that their needs were effectively met.

As funding for these innovative and collaborative services is reduced, many predict an increase in the high cost services that early intervention and prevention has prevented: costly inpatient services, increased out-of-home costs, and an increased number of children failing in school.

We are concerned that this rule will reduce the availability of, and access to, needed health care for these students. Medicaid reimbursement for administrative services is critically important to ensure that schools are able to provide appropriate outreach activities that link children to medical services, identify those students who may need medical screening, and provide referral services in the community.



We believe this proposed rule prohibiting schools from claiming these expenses would contradict existing law and seriously impede the ability of states and school districts to provide these services. Major reductions in Medicaid reimbursements will severely restrict the ability of Minnesota's family services and mental health collaboratives, in coordination with local school districts, to provide much-needed mental health care services to disabled children.

We urge you to reconsider implementing this proposed administrative change and to work with states and school districts to ensure that all children receive the health services that they deserve. Without access to appropriate health care, children with disabilities will experience additional challenges in their efforts to make progress towards leading healthy and productive lives.

Thank you for your time and consideration.

Sincerely,

Kathleen Johnson, President  
MN Association of County  
Social Service Administrators

Kate Lerner, Executive Director  
MN Association of County  
Social Service Administrators

cc: Cal Ludeman, MN Department of Human Services Commissioner  
Christine Bronson, Minnesota Medicaid Director  
Glenace Edwall, Director, MN Department of Human Services Children's Mental Health Division  
Minnesota's U.S. Congressional Delegation  
Association of Minnesota Counties  
MACSSA Membership

**Submitter :** Tom Dehner  
**Organization :** Massachusetts Office of Medicaid  
**Category :** State Government

**Date:** 11/06/2007

**Issue Areas/Comments**

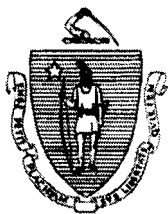
**GENERAL**

GENERAL

See Attachment

CMS-2287-P-1003-Attach-1.PDF

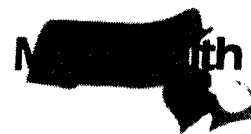
#1003



DEVAL L. PATRICK  
Governor

TIMOTHY P. MURRAY  
Lieutenant Governor

*The Commonwealth of Massachusetts*  
*Executive Office of Health and Human Services*  
*Office of Medicaid*  
*One Ashburton Place*  
*Boston, MA 02108*



JUDYANN BIGBY, M.D.  
Secretary

THOMAS R. DEHNER  
Medicaid Director

November 6, 2007

Kerry Weems, Administrator  
Centers for Medicare and 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

Re: CMS 2287-P: Comments on 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

Dear Mr. Weems:

The Commonwealth of Massachusetts appreciates the opportunity to submit comments on the Proposed Rule regarding the Medicaid Program; Elimination of Reimbursement under Medicaid for School Administration Expenditures and Costs Related to Transportation of School-Age Children between Home and School. Massachusetts would first like to express its support for comments prepared and submitted by the American Public Human Services Association and its affiliate, the National Association of State Medicaid Directors.

Massachusetts believes that schools are an efficient and effective way to reach children and their families in order to provide appropriate access to Medicaid. Because of their role in the life of children, schools are uniquely situated to reach children in need. Since school staff often have an existing relationship with families, they are a natural conduit for providing families with information on the Medicaid program and with assistance with the Medicaid application process. Additionally, as schools provide Medicaid covered services to children receiving Special Education, school personnel should be involved in planning and coordinating service delivery. These outreach and coordination services are the backbone of school based Medicaid administrative activities and should be provided by and in the schools. These activities are directly related to State Plan administration as defined in 42 CFR 431.302, and are consistent with other CMS policies that encourage states to work with other non-state employees.

Massachusetts rejects CMS' argument that administrative activities can only be appropriately provided in schools by state employees. In the Preamble to the proposed rule, CMS argues that this restriction is necessary, not because schools are an inappropriate place for such activities to be performed, but rather because states have not always claimed appropriately for administrative activities performed by school staff. As a general rule, school staff are not employees of the state. This new requirement would establish an operational barrier to using schools as a venue for performing administrative activities that support the Medicaid program that is in fact inconsistent with the efficient operation of the Medicaid program. CMS issued the School Based Claiming Guide in 2003. Arguments supporting the elimination of claiming for Medicaid administrative activities when performed by school staff do not take into account any changes or improvements to the program that may have resulted from this clarifying guidance. Rather than eliminating the program, a more reasonable action would be for CMS to continue to increase oversight and guidance in this area.

This attempt to restrict the ability of school personnel to perform Medicaid related administrative activities is inconsistent with other CMS policies that encourage the use of non-state employees in this role and, as such, appears to arbitrarily target schools. It is inconsistent with the provision in 42 CFR 433.53 (b), which gives states discretion to provide up to 60% of the non-Federal share from sources other than the State, and it is inconsistent with the Early and Periodic Screening, Diagnosis and Treatment regulations that urge states to "make use of other public health, mental health and educational programs..." in order to "ensure an effective child health program." If states are truly to leverage the benefits of working with other programs to be able to efficiently and effectively support the administration of the Medicaid state plan, Medicaid programs must be able to work with staff that are part of these programs and who are best situated to reach individuals in need of services.

In addition to these overarching concerns, Massachusetts has the following additional comments and clarifying questions related to ambiguities in the proposed rule.

### **Provisions of the Proposed Regulations**

#### ***Effective Date***

1) Please clarify the effective date for these regulations and provide a sufficient transition period to allow states to implement the provisions of the Final Rule.

#### ***Part 431- State Organization and General Administration***

##### ***431.53 Assurance of Transportation***

1) Please clarify whether the state has the option to claim FFP for transportation as either an administrative or direct service cost (see below proposed 433.20).

2) Please clarify whether transportation is only available to and from services that are included in a child's IEP or whether transportation is also available to and from other Medicaid services.

3) Please include in the regulation the provision in the Preamble that allows for school-age children to be transported from “school or home to a non school based direct medical service provider that bills under the Medicaid program or from the non school based provider to school or home.”

4) Please include in the regulation the provision in the Preamble that states that FFP is available for transportation services provided to children who are “not yet school-age” to and from providers, even if the site of service is a school.

5) Please define “school-age” and “not yet school-age.”

6) Please clarify that the limitation on the availability of FFP to specialized transportation in the May 21, 1999 State Medicaid Directors Letter (SDML) is superseded by this regulation.

#### ***Part 433- State Fiscal Administration***

##### ***433.20 Rates of FFP for Administration: Reimbursement for School Based Administrative Expenditures***

1) Please clarify what is meant by “under the control of” a public or private educational institution.

2) Please clarify in the regulation that activities that are required to support the provision of medical services are eligible for FFP if they are included in the direct service rate.

3) Please define “administrative overhead costs” in the regulation and clarify whether the list of administrative activities found in the Preamble is an exclusive list.

#### ***Part 440 – Services: General Provisions***

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

1) Please see clarifying questions under 431.53.

Massachusetts appreciates the opportunity to comment on this proposed rule and looks forward to continuing to work with CMS to strengthen and improve the Medicaid program.

Sincerely,



Tom Dehner  
Medicaid Director

**Submitter :** Mrs. Patricia Harrison  
**Organization :** Willits Unified School District  
**Category :** Academic

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

MAA funds have benefited our district's students in countless ways. As a special education secretary, I see how the funds are used to augment our budgets to provide the needed support for our students and their programs. We have an increase in Autism in our community. As an example, MAA funds are used to purchase communication aids and provide trainings for our staff to assist students with Autism. These children are very young, and the need for support while they are very young is extremely important. Having the use of MAA funds means being able to better serve these intense needs. Our budgets are already stretched to the limits, and without MAA funding, our budgets would be completely insufficient to cover the needs of these young students and other medically fragile students as well.

MAA funds have become very important for our district. Our community is very poor, most of our students at all age levels receive or qualify for free or reduced lunch. MAA funding helps our community take care of its own, helping us to provide the necessary and required medical services for our students in various ways.

Please keep the MAA reimbursement funding in place. It is very important.

**Submitter :** Dr. Jane Lawson  
**Organization :** Prince William County Schools  
**Category :** Local Government

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

GENERAL

See attachment

CMS-2287-P-1005-Attach-1.PDF



**Prince William County**  
**PUBLIC SCHOOLS**  
*Providing A World-Class Education*

November 5, 2007

Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
7500 Security Boulevard,  
Baltimore, MD 2124

Attention: CMS-2287-P, Mail Stop S3-14-22

Dear Sir or Madame:

This letter written on behalf of Steven L. Walts, Superintendent of Schools, provides the opportunity for Prince William County Public Schools to express concerns about Rule 2287-P. This rule proposes cuts to Medicaid reimbursements for school-based services. The Centers for Medicare and Medicaid Services (CMS) proposes to eliminate reimbursement, under Medicaid, for school administration expenditures and costs related to the transportation of school-age children between home and school. Prince William County Public Schools is adamantly opposed to this proposal.

Elimination of funding for services because of inappropriate, or even abusive, claiming practices by some providers is not the solution. CMS continued collaboration with the Medicaid agency puts them in a better position to establish regulations to ensure proper claiming, and support the key role schools play in identifying Medicaid-eligible children, promoting access to Medicaid services, and arranging or delivering needed care. CMS has provided Virginia with the necessary guidance to ensure appropriate claiming for school-based Medicaid administrative activities.

Federal financial participation in the costs of outreach, informing, and care coordination is available to all public entities performing such activities on behalf of the Medicaid program. Cutting funding for these activities in the school setting is not sound fiscal or social policy. Virginia public school divisions have been participating in Administrative Claiming since January 2003. Since that date, school divisions have received \$30,856,543 for administrative activities. During the 2006-2007 school year, Prince William County received approximately one million dollars to provide children improved opportunities to achieve their fullest potential.

JANE M. LAWSON, Ed.D.  
*Special Education Director*



Rule 2287-P – Medicaid  
Page two

The Medicare Catastrophic Coverage Act of 1988 expressly allows Medicaid to reimburse school districts for state plan covered services, including transportation, that schools provide pursuant to the Individualized Education Programs of Medicaid-eligible children with disabilities. A rule to prohibit schools from claiming administrative and transportation expenses would contradict existing law.

Prince William County Public Schools as well as other schools and communities across the United States are highly invested in helping children achieve their fullest potential. We urge the Centers for Medicare and Medicaid Services to continue investing federal matching funds in efficient and effective school-based Medicaid administrative activities and state plan-covered transportation services.

Sincerely,

Jane M. Lawson, Ed.D.  
Special Education Director

JML/slp

Cc: Pam Gauch  
Keith Imon  
George Kisha  
Alison Nourse-Miller  
Melvin Brown  
Diana Lambert-Aikens  
Michael Mulgrew  
Rae Darlington

**Submitter :** Ms. Waynette Cabral  
**Organization :** Hawaii State Council on Developmental Disabilities  
**Category :** State Government

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

CMS-2287-P-1006-Attach-1.DOC



**STATE OF HAWAII**  
STATE COUNCIL  
ON DEVELOPMENTAL DISABILITIES  
919 ALA MOANA BOULEVARD, ROOM 113  
HONOLULU, HAWAII 96814  
TELEPHONE: (808) 586-8100 FAX: (808) 586-7543  
November 6, 2007

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

Gentlemen:

Subject: CMS-2287-P (42 CFR Parts 431, 433 and 440)  
Medicaid Program; Elimination of Reimbursement Under Medicaid for School  
Administration Expenditures and Costs Related to Transportation of School-Age  
Children Between Home and School

On behalf of the Hawaii State Council on Developmental Disabilities, we thank you for the opportunity to provide comments on the above proposed rule relating to the elimination of reimbursement under Medicaid for school administration expenditures and costs related to transportation of school-age children between home and school. We do not support the proposed rule as its aims cut more than 4 billion in funding that supports health-related education services. The proposed cuts would significantly and adversely affect children in kindergarten through 12<sup>th</sup> grade and states would have to rely on taxpayer costs for services that are federally mandated.

We recognize the need for the Centers for Medicare and Medicaid Services (CMS) to address inappropriate claiming of administrative and transportation costs. Rather than eliminate the ability to claim for legitimate services, we suggest CMS establish clear guidance and criteria for submitting claims that are not subject to varying interpretations by different CMS regions and states.

Thank you for your consideration to our suggestion.

Sincerely,

A handwritten signature in black ink, appearing to read "Waynette K. Y. Cabral".

Waynette K. Y. Cabral  
Executive Administrator

**Submitter :** Ms. Anne Spoon  
**Organization :** Santa Cruz County Office of Education  
**Category :** Academic

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

I am opposed to CMS 2287-P as it will reduce the funds available to our already strained special education budgets. We, as special educators, go far beyond strictly educational needs. We connect families of special needs students to the community for medical and other services. This takes time and resources from us as educators. I am strongly against this proposal.

**Submitter :** Dr. Sharon Dodson  
**Organization :** Henry County Public Schools  
**Category :** Local Government

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

GENERAL

Dear Sir or Madam:

It has come to my attention that Rule 2287-P proposes cuts to Medicaid reimbursements for school-based services. It is my understanding that the Centers for Medicare and Medicaid Services (CMS) proposes to eliminate reimbursement, under Medicaid, for school administration expenditures and costs related to the transportation of school-age children between home and school. On behalf of Henry County Schools, I must express my adamant opposition to this proposal.

Henry County Public Schools has been participating in Medicaid reimbursements since 1991. In fact, Henry County Public Schools receives one of the highest Medicaid reimbursements among public school systems in Virginia. Our interim Medicaid payment for therapy services from FY 2006-07 exceeded \$136,000. In our experience CMS has provided school divisions in Virginia with the necessary guidance to ensure appropriate claiming for school based Medicaid administrative activities.

In our school division the financial effects of this change in Administrative Claiming alone would exceed \$100,000 annually. Should Administrative Claiming be eliminated we would have to shift funds from other areas in our budget to cover the cost or raise taxes if this proposal should become a reality. Our community in particular would be substantially impacted. We have lost over 10,000 jobs locally in the last five years directly related to the domestic decline in the textile and furniture industry. The proportion of students living in poverty has skyrocketed. For the school system to assume the cost of outreach, informing, and care coordination is impossible. However, our community is in desperate need of these services. Furthermore, the Medicare Catastrophic Coverage Act of 1988 expressly allows Medicaid to reimburse our school division for state planned covered services, including transportation that we provide in accordance with the Individualized Education Programs of Medicaid-eligible students with disabilities. A rule to prohibit us from claiming administrative and transportation expenses would apparently be in conflict with existing law.

Our school division struggles daily with dwindling local resources and increasing demand. Over the past four years we have had to consolidate and close five community schools as a result of the loss of manufacturing jobs. These are extraordinarily challenging times for our school division. However, in spite of this, Henry County Schools students met the academic challenges of the federal No Child Left Behind Legislation and is in fact a school division making Adequate Yearly Progress (AYP). Loss of these funds, otherwise available to other public entities performing the same activities on behalf of the Medicaid program, would unfairly exacerbate a dire situation.

Yours truly,

Sharon D. Dodson  
Superintendent

**Submitter :** Mr. William Ridgeway

**Date:** 11/06/2007

**Organization :** Mr. William Ridgeway

**Category :** Individual

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

I am writing to oppose CMS Rule 2287-P. It is extremely important that we maintain school-based Medicaid administrative claiming. Schools are critical gateways to health care for students and families. School based administrative claiming facilitates the distribution of Medicaid information and services to otherwise neglected portions of our population. Schools have a unique role and an inherent trust relationship with students and families. This connection is irreplaceable. Schools facilitate Medicaid goals economically since they make use of existing staff and their relationships with students and families.

The promise of funding for special education services from our government has never been met. School-based Medicaid funding allows us to reach out to ensure that these students get the medical services to which they are entitled.

Education is not the only role that schools play in a child's life. Children walk through school doors without housing, food, or health care. Legislators know this and have emphasized schools as one-stop shop for education, health and social services.

Medicaid administrative reimbursement is an investment that pays substantial social and economic dividends. Before CMS cuts funding to school districts for school based administrative claiming, it should reconsider the unique role played by schools in providing medical access and specialized services to our students and families.

Thank you for your consideration.

**Submitter :** Dr. Jerry W. Shiveley

**Date:** 11/06/2007

**Organization :** Montgomery County Intermediate Unit

**Category :** Academic

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

CMS-2287-P-1010-Attach-1.TXT

November 6, 2007

**VIA electronic submission**

Leslie V. Norwalk, Acting Administrator  
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

Re: File Code CMS-2287-P  
Proposed Amendments to Medicaid Implementing  
Regulation, 42 C.F.R. §§ 433.20 and 440.170

Dear Ms. Norwalk:

We represent the Montgomery County Intermediate Unit No. 23 ("MCIU"), a public education agency serving children with disabilities in Montgomery County, Pennsylvania. The MCIU and the 22 public school districts that it serves are greatly concerned about the proposed revision to Sections 433.20 and 440.170 of the Medicaid implementing regulations. The MCIU understands that you have received comments from Chester County Intermediate Unit No. 24 ("CCIU"), dated November 5, 2007 (submitted by Andrew E. Faust of the Sweet, Stevens, Katz & Williams LLP law firm), which comments the MCIU joins and incorporates herein.

We must emphasize that § 612(a)(12) of the Individuals with Disabilities Education Improvement Act of 2004, P.L. 108-446, 118 STAT. 2647-2808 (Dec. 3, 2004), 20 U.S.C. § 1412(a)(12), that other sources, including Medicaid, are the funding sources of first resort for children qualifying for special education and related services. The proposed revision upsets this Congressional balance without expressed legal authority to do so.

The identified purpose of improved efficiency will also not be accomplished. This is more fully detailed in CCIU's comments. In addition to the program duplication concerns, the proposed regulations fail to consider the task-transference costs. Currently, system infrastructure is in place and working well to accomplish congressional goals of support to special needs children. The proposed regulation, indeed, does not identify a problem in service delivery efficiencies. As noted by CCIU's comments, reference to "inconsistency" is not substantiated. Transferring responsibilities will no doubt engender program inefficiencies without proper need.

With respect to the proposed transportation reimbursement changes, under the proposed rule, school entities will still be reimbursed for transportation from school to a direct medical service provider, even if it is for the same services as provided in the school. The proposed rule sets up an incentive to use non-school providers, paid for through Medicaid funds, with transportation paid, also, through Medicaid funds. The proposed rule does not appear to promote efficiencies.

Elimination of federal financial support to any degree on grounds that another agency is supposed to pay is bad policy. Furthermore, in the absence of proper and full funding of the special education mandate, such a proposal is disingenuous. It is illustrative of the penurious federal attitude toward the nation's special needs population.



If nothing else, HHS's justifications demonstrate a profound need to rationalize the federal mandates for special needs children (education, medical, health and welfare, etc.) and to finally fulfill the so-far phantom federal promise to fully fund the special education mandate, which, admittedly, is not HHS's concern. But it is, after all, when IDEA 2004 was passed, the federal government's promise, again, to fully fund (Cong. Rec. S11657-658 (Nov. 19, 2004), among many other statements) the federal share of special education (which is only 40 percent of the total cost). Regardless of whether this agency or that agency is supposed to disburse funds, in the end, special needs children bear the cost of the broken promise.

MCIU believes a thorough inter-agency process involving both the U.S. Department of Education and the U.S. Department of Health and Human Services would serve our special needs children best while also greatly promoting over-arching federal efficiencies, a goal very much worthy of our collective time and careful consideration. The MCIU welcomes the opportunity to support you in such an effort and requests that the rule change be tabled in favor of such an inter-agency federal process.

If you have any questions or concerns about these comments, feel free to contact me at 610-755-9302 or Dr. Jeanmarie Mason, Director of Special Education, Montgomery County Intermediate Unit, at 610-755-9410.

Sincerely,

Dr. Jerry W. Shiveley  
Chief Executive Director

**Submitter :** Dr. Jerry W. Shiveley  
**Organization :** Montgomery County Intermediate Unit  
**Category :** Academic

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

GENERAL

See Attachment

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. Jane Drummond  
**Organization :** Missouri Department of Health and Senior Services  
**Category :** State Government

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

GENERAL

See attachment.

CMS-2287-P-1012-Attach-1.DOC



**Missouri Department of Health and Senior Services**

P.O. Box 570, Jefferson City, MO 65102-0570 Phone: 573-751-6400 FAX: 573-751-6010  
RELAY MISSOURI for Hearing and Speech Impaired 1-800-735-2966 VOICE 1-800-735-2466

**Jane Drummond**  
Director

#1012



**Matt Blunt**  
Governor

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

The Missouri Department of Health and Senior Services strongly opposes the Centers for Medicare and Medicaid Services' (CMS) proposed rule [CMS-2287-P] to eliminate reimbursement under MO HealthNet 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 will be denied reimbursement for administration services related to MO HealthNet outreach, program planning, referral and monitoring undertaken by school employees or contractors. These changes will create considerable hardships for public and parochial schools in Missouri by jeopardizing the current school health services system.

The Missouri School Health Services system began in 1995, when the governor recognized that only 50% of the public school districts in Missouri had a school health program, and that school districts least likely to have a school health program were in areas of greatest poverty. The Departments of Health and Senior Services, Social Services and Elementary and Secondary Education partnered to develop a system to assist schools in implementing a coordinated approach to school health.

Funding was appropriated to assist school districts in developing the infrastructure necessary for a coordinated school health program. School districts were encouraged to enroll in the school administration program (known in Missouri as School District Administrative Claiming) as a means of local funding. The program is very successful. Currently ninety-nine percent of the public school districts in Missouri have a school health program, and the statewide nurse-to-student ratio is 1 RN for every 740 children. One hundred and one school districts have transitioned from state funding to local funding, and many were able to do this related to the monies generated locally from administrative claiming.

[www.dhss.mo.gov](http://www.dhss.mo.gov)

**Healthy Missourians for life.**

The Missouri Department of Health and Senior Services will be the leader in promoting, protecting and partnering for health.

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER: Services provided on a nondiscriminatory basis.

The focus of the School Health Services Program is to address increased access to medical and dental care for children with special health care needs, and increase referral completions for health-related barriers to learning.

Further indicators of success of the School Health Services (SHS) Program are:

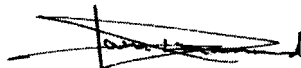
**Fiscal Year 1995 to Fiscal Year 2007 Missouri Statistics and Data**

- Percent of counties with adequate nurse-to-student ratio increased from 3.5% to 71%;
- Percent of public schools without a formal school health program decreased from 50% to 1.3%;
- Percent of children in the SHS program with access to a regular source of medical care increased from 33.33% to 84.93%;
- Percent of children in the SHS program with a dental exam within the past 12 months increased from 16.06% to 65.57%;
- Percent of children in the SHS program with an individualized health care plan in place increased from 38.08% to 95.52%;
- Percent of children with asthma with an Asthma Action Plan in the SHS program increased from 49.83% to 95.82%;
- Percent of children with referral completion for Hearing Screening increased from 42% to 88%; and
- Percent of children with referral completion for vision screening deficits increased from 39.5% to 80%.

A survey of school districts in 2006 revealed that 56% of school districts in a school health contract with the Department of Health and Senior Services use administrative claiming monies to pay salaries for school nurses, health aides, and services for children with special health care needs that are not covered by other sources. If the school district administrative claiming program ends, Missouri will likely go back to a large percentage of schools reducing or dropping health services.

Missouri has built a school health care system to address the unique needs of children in the home, the community, and at school. Local communities rely on funding generated by administrative claiming to support this system. The Department of Health and Senior Services urges CMS to rescind this proposal and reaffirm its commitment to low-income and disabled children by continuing to invest in school-based administrative services.

Sincerely,



Jane Drummond  
Director

MC/cr

**Submitter :** Miranda Gooding  
**Organization :** Beverly Massachusetts City Council  
**Category :** Local Government

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

November 6, 2007

**BY ELECTRONIC SUBMISSION**  
(<http://www.cms.hhs.gov/eRulemaking/>)

Centers for Medicare and Medicaid Services  
U.S. Department of Health and Human Services  
Attention: CMS-2261-P  
P.O. Box 8018  
Baltimore, MD 21244-8018

**Re:** Proposed Rule Change by The Center for Medicare and Medicaid Services published in the Federal Register on September 7, 2007 -- Elimination of Reimbursement under Medicaid for School Administrative Expenditures and Costs Related to Transportation of School-Age Children between Home and School

Dear Sir/Madam:

The purpose of this letter is to express our strong opposition to the above proposed rule. We estimate that the elimination of reimbursement under Medicaid for administrative expenditures would result in a reduction of approximately fifty percent (50%) of our district's eligible reimbursements, or between \$300,000 - \$500,000 in matching funds annually. This reduction would severely impact the district's ability to provide critically needed resources for health promotion, prevention and early intervention services that are required under the Individuals with Disabilities Education Act (IDEA). The IDEA imposes worthy and significant obligations on school districts, which are largely unfunded. The current Medicaid reimbursements are an important mechanism for offsetting the costs of the otherwise unfunded federal mandates that local governments are required to provide and pay for, often at the expense of basic local services. We urge you to reject the proposed rule change.

Sincerely,

Paul M. Guanci, President  
Beverly City Council

cc: Senator Edward M. Kennedy  
Senator John F. Kerry  
Representative John F. Tierney

**Submitter :** Ms. Nicole Bassin  
**Organization :** Anacapa Middle School  
**Category :** Academic

**Date:** 11/06/2007

**Issue Areas/Comments**

**GENERAL**

**GENERAL**

Even though, classified school personnel is increasingly burdened with reports, federal and state mandated reports, etc., I have to admit, that being forced to participate in the MAA program has helped me and others in our school office, understand the services that are offered to California children. It is vital that the community is made aware of the vital program to keep our children healthy and (therefore) in school.



**Submitter :**

**Date: 11/06/2007**

**Organization :**

**Category : Local Government**

**Issue Areas/Comments**

**GENERAL**

GENERAL

Please keep the Medicaid funding up! We need it in our schools to cover the cost of medical services required by the government to be provided in the schools.