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Date:	<u>8/24/07</u>
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Person's Name:	<u>Michael Leavitt</u>
Company Name:	<u>Department of Health & Human Services</u>
Fax Number:	<u>202-690-7203</u>

From:	<u>Karen Tuminello, TANF Specialist, Erie, Pennsylvania</u>
Message:	
Dear Mr. Leavitt:	
Please be advised that I do not support regulation CMS-2287-P, regarding ACCESS funding. Support of this regulation would limit ACCESS funding to school districts and intermediate units in Pennsylvania, thus having a negative affect on educational programs in this area.	
Thank you for noting my opinion.	
Sincerely,	
	
Karen Tuminello	

Total Number of Pages: <u>1</u> (Includes this cover sheet)



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National Association of State Directors of Special Education, Inc.

1800 Diagonal Road, Suite 320, Alexandria, VA 22314

Tel: 703/519-3800 Fax: 703/519-3808 www.nasdse.org

November 6, 2007

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

Re: Comments on Proposed Rule CMS-2287-P

On behalf of the National Association of State Directors of Special Education (NASDSE), the not-for-profit organization representing the state directors of special education in the states, the federal territories, the District of Columbia, the Department of Defense, the Bureau of Indian Affairs and the Freely Associated States, I appreciate this opportunity to comment on CMS Proposed Rule 2287-P.

NASDSE urges you to rescind this proposed rule, which was published in the Federal Register on September 7th. The proposed rule will have a devastating impact on virtually every state and local education agency that must, by law, provide services to students with disabilities. Some of these services are health-related, and as such, are Medicaid reimbursable. While the proposed regulation does not directly affect reimbursement for these services, a school district's inability to be reimbursed for administrative services related to the provision of the medically necessary services, will in fact have a chilling effect on a school district's ability to deliver these services. Furthermore, the proposed rule expressly contradicts the intent of the law 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.

NASDSE strongly opposes this proposal, which would deny schools reimbursement for legitimate, appropriate and necessary administrative services undertaken by school employees or their contractors and would virtually eliminate the ability of school districts to be reimbursed for transportation costs that up to now have been considered to be eligible for federal financial participation (FFP).

Cutting funding for Medicaid outreach, administrative costs 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 and state education agencies, estimated to cost more than \$3.6 billion over the first five years. The proposed federal savings of this rule represents less than 0.2% of 2006 federal Medicaid expenditures—a minimal impact on the CMS budget. The proposed rule represents a cost shifting — not a cost savings — from the federal government to state and local school districts that are obligated to provide these services. CMS has not provided any justification for this cost shifting.

We believe that the proposed rule:

1. contradicts the terms of the Medicaid statute that allows states to have flexibility in administering their state Medicaid plan and to collaborate with other state agencies;
2. exceeds Secretarial authority;
3. discriminates against local education agencies as providers of Medicaid services to eligible children and youth; and
4. unfairly penalizes all states and local education agencies for CMS' failure to provide oversight and guidance.

Flexibility and Collaboration

Under the federal-state Medicaid program, collaboration with other public agencies is a consistent statutory theme. 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 wrote in its *Medicaid School-Based Administrative Claiming Guide* (2002), “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.” Without any public engagement whatsoever, CMS is now proposing to rescind the policy established by the *Guide*.

With respect to students with disabilities, Congress clearly intended to prohibit 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 (P.L. 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). Furthermore, IDEA explicitly references the use of Medicaid funds to cover the cost of medically related services provided to students with disabilities. New regulations promulgated after the law was reauthorized added a new section addressing the need for parent approval prior to submitting claims to Medicaid for reimbursement. The new regulations ensure that parents are aware that Medicaid is a source of funding for some of the services that their children are receiving in the schools or as required by the child’s IEP.

Exceeds Secretarial Authority

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 Health and Human Services (HHS) finds that these activities performed specifically by school employees are not “necessary...for the proper and efficient administration of the State [Medicaid] plan.”

Discriminates Against Local Education Agencies

We take exception to the Secretary’s pronouncement. Secretarial authority in this regard cannot be construed to limit the power of states to administer their plans, to act in the best interest of beneficiaries or to involve other agencies in the administration of their state plan. The Secretary proposes to eliminate an entire category of entities, e.g., local education agencies, from providing Medicaid-related services. The Secretary has not eliminated reimbursement for all administrative services under Medicaid, only those provided by schools. If these activities are not “necessary,” when performed by school personnel, we wonder why the Secretary has not proposed an all-out ban on all administrative services. The simple answer is because the law provides for reimbursement for these necessary services. The Secretary is only proposing to eliminate reimbursement for services provided by schools without taking into account the effectiveness of schools in providing these services, especially to students with disabilities. It would be extremely disruptive to a student’s academic day to have to leave school to obtain medically necessary services. In fact, these activities *are* absolutely necessary for the proper and efficient administration of the state Medicaid plan.

Failure to Provide Oversight and Guidance

The Secretary raises concerns about abusive billing. If that is indeed the case, it is CMS’ responsibility to provide guidance to school districts and states so that billing questions can be resolved. It should not be the reason for wiping out an entire program. CMS released a revised administrative claiming guide in 2002. Since that date, CMS has held no specific trainings or workshops to facilitate implementation of the guide. As a result, if CMS is concerned that the guide is not being followed, then it bears some of the responsibility for not taking

any steps to ensure that the guide is properly adhered to.

Impact of the Proposed Rule

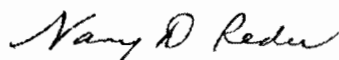
The loss of federal reimbursement for administrative and transportation services provided by school districts will have a devastating impact on a school district's ability to provide needed services to Medicaid-eligible children. If finalized, this rule will risk poor children not being identified for and receiving needed medical services, and poor disabled students not receiving services in a timely manner. The loss of these funds could force districts to scale back their special education and special services personnel (e.g., school nurses, physical and occupational therapists and social workers), increasing the specialist-per-pupil ratio. Furthermore, school personnel would be less available to link children with community medical and health clinics and coordinate services required by a student's IEP (e.g., occupational and speech therapies, counseling, dental and mental health care and clinic- or hospital-based services). Additionally, the loss of funding could affect services for all general education students, because if local education agencies are forced to spend more local (or state) to provide and coordinate medically necessary services, there will be less money to provide educational services to all students.

Medicaid's transportation reimbursement has enabled school districts to continue to enhance buses with specialized equipment (e.g., ramps, lifts, seat belts and personal aides) for students with more severe disabilities. Some schools have used Medicaid transportation funds to hire more bus drivers to provide additional routes to transport students for medical services. Without these funds, these enhancements and personal care services will have to be eliminated or scaled back.

CMS is disingenuous when it states that this rule will not have a "significant economic impact" on local school districts. Schools stand to lose more than \$600 million in the first year of the rule's implementation. This may very well be, as we note above, a very small component of the overall Medicaid budget, but it is not small change to the school districts and states that rely on this funding to maintain the quality of the services provided to students with disabilities. CMS may believe that it is not the agency's responsibility to fund special education services. Once again, we point to federal statutes that specifically allow Medicaid funding for these services (and indeed, in the case of IDEA's Part C Program for Infants and Toddlers, require such funding). Medicaid was originally enacted as a program to ensure that low-income children and families had access to health care. Low-income children *with disabilities* were not -- and are not -- excluded from the target population. Indeed, as our nation's most vulnerable children, it is incumbent that all federal agencies take the responsibility given to them by law, to ensure that their medical needs are provided for.

Again, thank you for the opportunity to comment on this proposed regulation. Should you have any questions, please feel free to contact me at nancy.reder@nasdse.org; (703) 519-3800, ext. 334.

Sincerely,



Nancy Reder, Esq.
Director of Government Relations
Deputy Executive Director



Texas Association of School Boards
P.O. Box 400 • Austin, Texas 78767-0400 • 512.467.0222
12007 Research Blvd. • Austin, Texas 78759-2439 • www.tasb.org

Serving Texas Schools Since 1949

November 2, 2007

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

To Whom It May Concern:

The Centers for Medicare and Medicaid Services (CMS) published in the Federal Register on September 7, 2007 a proposed rule (CMS 2287) that would eliminate federal reimbursements to schools that provide certain Medicaid services mandated under the Individuals with Disabilities Education Act (IDEA).

Section 411(k)(13) of the Medicare Catastrophic Coverage Act of 1988 (MCCA) clarifies that federal Medicaid reimbursement is available for services furnished to children in fulfillment of the requirements under IDEA. Specifically, section 1903(c) of MCCA “prohibits the Secretary from denying or restricting Federal Medicaid payment to States for covered services furnished to a child with a disability on the basis that the services are included in the child’s Individualized Education Program (IEP) or Individualized Family Services Plan (IFSP).”

The proposed rule outlined in the Federal Register states that Health and Human Services Secretary Leavitt determined that Medicaid reimbursements for school-based services do not meet the statutory test under section 1903(a)(7) of MCCA in as much that the services cannot be considered “necessary for the proper and efficient administration of the State [Medicaid] Plan.” However, the proposed rule does not describe which type of service Secretary Leavitt considers legitimate within Medicaid administrative activities.


Schools play an integral role in identifying children and connecting them to Medicaid services in schools and in their communities. The Texas Association of School Boards (TASB) is very concerned that the implementation of this rule would curtail access to vital health and developmental services for low-income children with special needs. The funds provided by the federal government afford a variety of services such as outfitting buses with specialized equipment, transporting children to school for their medical appointments, identifying students who need screenings and evaluations, and coordination and monitoring of medical care.

In Texas, it is estimated that Medicaid expenditures for school-based services totaled \$86.3 million in FY 2006. Roughly \$77.9 million of these expenditures were for direct services in schools, including \$14.4 million in transportation, and \$8.4 million was spent for school-based administrative activities. These federal dollars are not kept by the State of Texas nor are they used to pay its vendor, TMPH, for Medicaid claims processing: these funds go directly to the child with special needs.

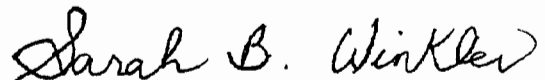
These services are mandated under the IDEA law, and school districts cannot curtail nor limit Medicaid services to students with disabilities. The loss of these resources means Texas schools will lay-off nurses and social workers, limit referral services, and reduce transportation services to students with disabilities. Furthermore, this action would substantially increase the burden on already financially-strapped local school districts. The budget constraints imposed by the proposed rule are likely to impact students in regular education programs, forcing school districts to scale back electives, after school initiatives, and teachers and professional support positions.

TASB strongly urges you not to implement proposed rule CMS 2287-P. Such action is necessary in order to protect schools' ability to provide students with disabilities with the health care services that are mandated by federal law.

Sincerely,



Renard L. Thomas
President
Texas Association of School Boards



Sarah Winkler
Vice President
Texas Association of School Boards

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Lassen County Office of Education

472-013 Johnstonville Road North, Susanville, CA 96130-8752

Telephone (530) 257-2196 Fax (530) 257-2518

<http://www.lcoe.org>



"Investing in the Future" through Leadership • Service • Partnership

Robert L. Owens, Superintendent

November 2, 2007

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

Ladies & Gentlemen:

As the Lassen County Superintendent of Schools, I am submitting the following comments in opposition to the Centers for Medicare and Medicaid Services (CMS) proposed rule (CMS-2287-P) restricting local educational agency eligibility for Medicaid funding, published in the Federal Register on September 7, 2007. This rule would effectively eliminate federal reimbursement under the Medicaid program for the costs associated with school personnel who perform specified administrative activities, such as Medicaid outreach and referral, and monitoring of medical services. The proposed rule would also eliminate reimbursement for many of the transportation services required for special education students.

Schools serve as a gateway to health care for some of the State's most vulnerable residents – special education students and children in families whose circumstances have limited their access to health care. School districts across California assist their county Medicaid administrative agencies in distributing information about the California program and other available services to individuals within our population that would otherwise not receive this much needed care. This regulation will eliminate federal support and only serve to reduce school efforts to bring health services to medically compromised children.

The financial impact of this regulation on small and urban California schools will be dramatic. While the \$103 million in federal Medicaid reimbursements for services provided by California school districts is considered modest compared to the overall federal Medicaid budget, it is critical funding for school districts that are committed to improving health care access for their students. These funds have been a vital source of support for schools that have hired additional school nurses or health aides, supported expanded outreach activities, or developed school-linked medical services for high-risk populations.

The main reason cited by CMS for these restrictive regulatory changes is concern to ensure that school-based administrative expenditures are recognized and claimed properly, consistent with Federal law. California was one of the first states to adopt new guidelines issued for this program in the *2003 CMS Medicaid School-Based Administrative Claiming Guide*. The

November 1, 2007

Page 2

California School-Based Medi-Cal Administrative Activities (MAA) program has been implemented in a comprehensive and systematic manner consistent with these guidelines, with required oversight at multiple levels. To my knowledge, there have been no published audit findings to gauge state compliance with these 2003 guidelines, yet these restrictive regulations are proposed to stem alleged widespread "waste, fraud and abuse."

California does not support a program where waste, fraud, and abuse could occur. We have made excellent progress in complying with the requirements of the *2003 Guide* and have implemented policies and procedures statewide that institute systemic controls designed to detect and limit non-compliant activities. Implementing CMS-2287 is an ill-conceived "fix" that will only set back our efforts to ensure that all children come to school healthy and ready to learn.

Thank you for your consideration of my comments on this important issue.

Sincerely,



Robert L. Owens
County Superintendent of Schools

RLO/sar
Medicaidfunding.ruling



**FAIRFAX COUNTY
PUBLIC SCHOOLS**

Jack D. Dale, Superintendent
8115 Gatehouse Road
Falls Church, Virginia 22042

November 6, 2007

Center 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

FCPS Response to CMS-2287-P:

Fairfax County Public Schools (FCPS) is the largest school system in the state of Virginia and the thirteenth largest school district in the nation. We are writing in response to the August 7, 2007, *Federal Register* announcement from the Center for Medicare and Medicaid Services (CMS) requesting public comment on the Notice CMS-2287-P. This regulation will eliminate federal reimbursement under the Medicaid program for the costs of certain administrative and transportation services provided to students with disabilities. As a school system that participates in this program, we urge you to protect the ability of ALL schools to provide much needed services to Medicaid-eligible children by objecting to the proposed cuts.

CMS-2287-P will impose a significant financial burden on local school districts, at an estimated cost of \$3.6 billion over 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 for services provided to children with disabilities.

The civil rights law, the Individuals with Disabilities Education Act, entitles children with disabilities to a free, appropriate public education in conformity with an individualized education program (IEP). An IEP is developed for eligible individuals with disabilities and describes the range of services and support needed to assist individuals in benefiting from and maximizing their educational/developmental opportunities. The types of services provided under an IEP include services such as speech pathology and audiology services, as well as physical, psychological, and occupational therapies. While IDEA confers rights to individuals and obligations on the part of school systems/early intervention providers, it is not directly tied to a specific program or an automatic funding source. For years, the Federal government has failed to provide anywhere near the level of funding promised in the IDEA statute. States' ability to appropriately rely on Medicaid funds for Medicaid services provided to Medicaid-eligible children pursuant to an IEP helps defray some of the state and local costs of implementing IDEA. This, in turn, helps assure that children receive all of the services they have been found to need in order to meet their full potential.

CMS' finding in 2287-P that the administrative activities performed by schools support the educational program and do not specifically benefit the Medicaid program does not reflect our

experience in FCPS. Administrative claiming is based on the Medicaid time studies and only Medicaid related activities such as Medicaid outreach, Medicaid information and referral, and Medicaid eligibility intake are identified as Medicaid activities in the time study. These services are medical and health related activities and, as such, do not directly support the educational mission of FCPS.

CMS has repeatedly recognized that school districts perform activities that provide school-based administrative support for Medicaid activities. CMS again supports this position in 2287-P while saying,


*"However, the **proposed** rule does not bring into question the legitimacy of the types of Medicaid administrative activities provided in the schools. Rather it reflects the Secretary's determination that such activities are only necessary for the proper and efficient administration of the State Plan when conducted by employees of the State or local Medicaid agency."*

Thus CMS continues to recognize the need for school-based Medicaid administrative activities but is going down a questionable road by insisting that these services be supplied by State or local Medicaid agency personnel. Thus non-FCPS employees would have to provide these services, if they are provided in the future, to our students. FCPS strongly opposes this Federal determination and insists that school personnel with direct contact with the students and their families (and who know the student's medical needs through this direct contact) are the personnel who can best supply this school-based administrative support. School personnel on the front line with the students, interacting with the family, are the preferred method—and the only method to ensure that Medicaid services reach eligible students.

FCPS recognizes that the proposed rule, in some cases, seeks to address legitimate policy issues. However, this proposed policy by CMS was developed with limited outreach to the states, municipalities, and school districts. The far-reaching impact of this rule necessitates a more wide-ranging and collaborative effort. Fairfax County Public Schools would welcome the opportunity to work with CMS to establish clearer and more realistic guidelines for coverage and reimbursement.

Thank you for your reconsideration of this important matter.

Sincerely,


Jack D. Dale
Superintendent of Schools

JDD/mc

CENTERS FOR MEDICARE AND MEDICAID SERVICES
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
ATTENTION: CMS-2261-P & 2287
P.O. BOX 8018
BALTIMORE, MD 21244-8018

Dear Madam(s) or Sir(s):

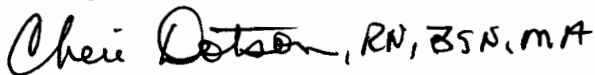
The New Mexico Medicaid School Based Services Advisory Council wishes to express deep concern regarding the Notice for Proposed Rule Making for Coverage for Rehabilitative Services under the Medicaid program and the elimination of administrative claiming and billing for transportation.

New Mexico is a state with urban, rural and frontier areas. Approximately 52 percent of the students in NM receive free and reduced lunches, 23 percent are living in poverty. Many of these students are eligible to receive Medicaid school based services.

Reimbursement from administrative outreach brought in about three million dollars in 2006. This money provided nurses, counselors, equipment, psychologists, and medicaid coordinators all of which benefit all students in the schools and provide much needed health and related services to the students.

The council also strongly opposes changes in the Medicaid rehabilitation services definition. (Proposed Medicaid Program Rule CMS 2261P & 2287) It appears that the new definition could be interpreted to eliminate Medicaid reimbursement for rehabilitation services in cases where other coordinating programs, including education may also be responsible to pay for them. The Social Security act includes the following language when addressing rehabilitative services: "Any medical or remedial services (provided in a facility, a home, or other setting) recommended by a physician or other licensed practitioner of the healing arts, within the scope of their practice under State law, for maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level.*" The fact that Medicaid-covered services are commonly available to Medicaid enrollees through other funding sources has never been considered a reason to deny a Medicaid-covered person a Medicaid-covered service. We believe the proposed changes would undermine the very purpose of the Title XIX program, eroding coverage for and therefore access to services needed by many of our most vulnerable citizens including our children.

Sincerely,



Cheri Dotson, Co-Chair on behalf of the members of
New Mexico Medicaid School Based Services Advisory Council

*Social Security Act, Section 1905(a)(13)



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North Carolina Department of Health and Human Services

2001 Mail Service Center • Raleigh, North Carolina 27699-2001

Tel 919-733-4534 • Fax 919-715-4645

Michael F. Easley, Governor

Dempsey Benton, Secretary

November 1, 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, Maryland 21244

Dear CMS:

On Behalf of the North Carolina Department of Health & Human Services, please find enclosed North Carolina's comments in response to CMS Proposed Rule 2287-P. The proposed rule supports the elimination of reimbursement under Medicaid for certain school-based administration expenditures or transportation costs of school-age children. The State of North Carolina respectfully opposes the elimination of reimbursement of these desperately needed school-based services.

Thank you in advance for considering North Carolina's comments in regards to Proposed Rule 2287-P.

Sincerely,

A handwritten signature in black ink, appearing to read "Dempsey Benton".

Dempsey Benton

Cc: William W. Lawrence, Jr., MD
Tom Galligan
Tara Larson
Mona Moon





PUBLIC SCHOOLS OF NORTH CAROLINA

STATE BOARD OF EDUCATION Howard N. Lee, *Chairman*

DEPARTMENT OF PUBLIC INSTRUCTION June St. Clair Atkinson, Ed.D., *State Superintendent*

WWW.NCPUBLICSCHOOLS.ORG

October 26, 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

To Whom It May Concern:

Thank you for the opportunity to offer comment on your proposed rule, 2287-P. In North Carolina, we take great pride in the education we provide to all our students. For the school year 2005-2006, North Carolina schools received \$7,041,871.08 in reimbursement for the activities school personnel performed for the Medicaid Administrative Claiming program. As of March 2007, North Carolina schools have received \$4,582,250.80. These funds provide services and equipment that benefit all our students, not just those with disabilities.

Public schools throughout our nation are established in communities and are well suited to assist the Medicaid program in finding and providing needed health care to eligible children. There is no other partner or agency that consistently reaches more eligible children. In the comments offered by North Carolina's Department of Public Instruction and Department of Health and Human Services, Division of Medical Assistance, you will find specific examples of how these reimbursements are used. Our comments are submitted jointly. This reflects not only our close working relationship but also our commitment to our continued partnership in the Administrative Claiming program for the benefit of students throughout North Carolina.

Government agencies often are accused of being shortsighted in their decisions. Here is an opportunity to take the longer view. Savings provided by cutting all school-based participation in the Administrative Claiming program would be less than 0.2% of the 2006 federal Medicaid expenditures but would cost our students so much more by eliminating another venue to gain Medicaid coverage. Please reconsider the proposed elimination of all school-based reimbursements. Allow us to continue our work together to ensure each student is healthy enough to benefit from their public education.

Sincerely,

A handwritten signature in cursive script that reads "June St. Clair Atkinson".

June St. Clair Atkinson

JSA/MNS/TRW/lr

OFFICE OF THE STATE SUPERINTENDENT

June St. Clair Atkinson, Ed.D., *State Superintendent* | jatkinson@dpi.state.nc.us

6301 Mail Service Center, Raleigh, North Carolina 27699-6301 | (919) 807-3430 | Fax (919) 807-3445

AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

North Carolina Response
Regarding CMS Proposed Rule 2287-P

North Carolina Department of Public Instruction (DPI) and Department of Health and Human Services, Division of Medical Assistance (DMA) are writing jointly to express extreme concern and disapproval regarding the Centers for Medicare and Medicaid Services (CMS) Proposed Rule 2287-P. This rule proposes to stop reimbursing school districts for administrative activities provided by school personnel. While we understand CMS has to address overpayments due to a few states inappropriate filing of administrative claims, we do not believe the best solution is to stop reimbursing school districts for the very activities CMS itself admits are best performed in local school settings.

North Carolina Public Schools are already present and well-integrated in all our communities. The school setting offers unique advantages and opportunities to reach children who are at-risk and their families to inform and encourage them to enroll in the Medicaid program, as well as to provide assistance to students in accessing needed medical services. Who better to provide this service than people employed by the local schools?

We ardently encourage the CMS to continue to take advantage of effective activities that serve eligible students in a setting where children with disabilities and their families can be reached and served most efficiently. Do not eliminate reimbursement for these programs that work; instead provide leadership to these programs to define appropriate procedures, criteria and limits for allowable costs of Local Educational Agencies' (LEA) administrative activities on behalf of the Medicaid program.

Congress and the federal government agencies have consistently encouraged Medicaid to share in LEA costs for meeting the medical needs of students with disabilities. Four years ago CMS stated in its *Medicaid School-Based Administrative Claiming Guide* that "the school setting provides a unique opportunity to enroll... and to assist" Medicaid-eligible children access available benefits. Further in the Introduction to the Guide, CMS described schools as "engaged in a variety of activities to support the mission of CMS to help ensure that students come to school healthy...ready to learn [and ready to] benefit from instructional services."

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. Inappropriate or inconsistent claiming is not limited to school personnel, yet this proposed rule singles out school personnel from other provider groups to end reimbursement. Cutting funding for these activities in the school setting is not sound fiscal, educational or social policy.

North Carolina Public Schools served 197,492 students in special education (as of the April 2005 child count), an increase of 10.5% from the child count from April

2000. Despite recent improvements in federal funding, Congress has never appropriated enough funding to match the levels specified (i.e., 40%) in the Individuals with Disabilities Education Act. For this year, IDEA funds only 17.7% of the costs to serve these students. To assist with the onus of discretionary funding, Congress passed the Catastrophic Medicaid Act (P.L. 100-360). This legislation specifically permits Medicaid to reimburse school districts for Individualized Education Program services provided to Medicaid-eligible children as long as those services are covered by the State Plan. As noted in the National School Board Association's July 7, 2006 letter to U.S. Secretary of Health and Human Services Michael Leavitt, if implemented the proposed cuts "would substantially increase the burden on already financially-strapped local school districts to cover these costs, despite the fact that they are entitled to this reimbursement under law."

CMS issued a School-Based Administrative Claiming Guide in May of 2003. Prior to the issuance of the Guide, CMS provided little guidance to Medicaid agencies and Local Educational Agencies (LEAs) in terms of school-based administrative claiming. After the Guide was issued, states with existing programs had to be in compliance with the Guide's requirements no later than October 1, 2003.

North Carolina submitted a revised cost allocation plan in October 2004 and received approval in February 2007 with an effective date of October 1, 2003. The Office of the Inspector General (OIG) has made school-based claiming one of its top priorities. Most states that are cited are for reasons of lack of oversight and improper payments. However, the audits have been for claims prior to October 2003 when CMS initially issued the Guide. In some cases, it appears auditors may have applied the 2003 guidelines retrospectively. North Carolina has reviewed the OIG audits from other states to ensure we are not making some of the same mistakes. To date, we are not aware of any similar occurrences or situations with North Carolina's school-based Medicaid Administrative Claiming (MAC) program.

In North Carolina both our DMA and DPI are committed to ensuring that Medicaid administrative dollars are reimbursed appropriately and within established CMS guidelines. Upon CMS approval of North Carolina's MAC monitoring plan, DMA has hired and trained additional staff to help perform extensive reviews of the MAC program. The reviews will be in addition to reviews conducted by DPI and the Office of Education Services (OES), which includes the three (3) State owned schools for the deaf and blind. The reviews will be a combination of both on site and desk reviews.

LEAs are trained both annually and on an as needed basis to ensure responsibilities are understood and programs are in compliance with Federal and State rules and regulations. North Carolina is currently working diligently with CMS to revise the time study methodology previously used in the MAC program to more efficiently address claiming for both the MAC and Fee for Service (FFS)

programs. North Carolina recently implemented Random Moment Time Sampling (RMTS) effective October 1, 2007. RMTS will measure the amount of time spent by eligible staff on MAC and FFS activities. RMTS results will be used to calculate MAC claims and set FFS rates. The RMTS methodology is designed to avoid duplicate billing between the MAC and FFS programs.

In the past, participants of the MAC program were required to learn Medicaid codes and had the responsibility for coding their own time in fifteen (15) minute increments for a full week. The Traditional One-Week time study methodology previously described was very time consuming and burdensome to administer. RMTS will not require time study participants to understand Medicaid codes or complete a Time Study for a full week. Instead random moments are sampled throughout the quarter. Central coders use the data provided to select the appropriate Medicaid code, which helps ensure consistency and accuracy of Medicaid coding and reimbursement. On a quarterly basis, DMA will review a sample of the coding process and original participant documentation for Quality Assurance to show the data submitted in the time study questionnaires support the code selected and therefore show the codes are valid and accurate. In addition to the quarterly review, at its discretion, DMA may review the completed coding and original participant documentation at any time throughout the claim process or as needed for further review or audit purposes.

Illegitimate claims should be addressed by CMS. However, eliminating funding for all activities provided by one type of community provider due to inappropriate claiming by some is an overreaction and drastically punitive to compliant providers. Instead of ending reimbursements for all school personnel, including the vast majority of compliant LEAs, CMS should use the findings to better guide school districts in proper claiming. Those few who claim inappropriately should be identified and justly censured without eliminating funding resources for our children with disabilities.

North Carolina Public Schools utilize the funds provided by the MAC program to ensure vital services and equipment for our students with disabilities. In Northampton County Schools, MAC funds were used to pay for related services (i.e., speech therapy, physical therapy and occupational therapy) for children with special needs. In Vance County Schools, the Department for Exceptional Children received \$24,980.00 from MAC reimbursements during the 2005-06 school year. This money helped to send teachers to professional development and provide special needs students with materials and devices needed to promote their success. In New Hanover County Schools, MAC funds are used solely for school nurses. Medicaid revenue combined with local and state resources have permitted that system to place a full-time school nurse at each of its schools. With this resource in place New Hanover has been able to strengthen school health education programs and services at each school. Elimination or reduction in these services will move some medically related services to less well-trained school staff, reduce the capacity of schools to successfully support children with medical needs in the school they would normally attend and reduce the

emergency response capacity of schools. More specifically, in New Hanover County a family with three children who have severe peanut allergies enrolled in school from another state. They requested home instruction for their children, which was the way in which they were served in the system from which they had moved. Due to a combination of factors, most notably full-time school nursing services at the school, the children began to attend school for the first time in their lives. Advancing in the curriculum and making friends like other kids brought joy to these children and their parents. There are hundreds of similar examples almost every day across our state. LEAs rely on the investment made with MAC funds.

We have a responsibility to each of our students to educate them to their best potential; this can only be accomplished if students are healthy. Schools and communities across our nation are highly invested in helping students achieve their fullest potential. The State of North Carolina respectfully requests CMS to reconsider eliminating reimbursement under Medicaid for allowable school-based administration expenditures. We believe with proper oversight and monitoring at both the State and the LEA level along with clear guidance from CMS to ensure proper claiming, schools can continue to receive reimbursement for identifying Medicaid-eligible children and arranging needed medical care and transportation. **The State of North Carolina respectfully urges CMS to continue investing federal matching funds in efficient and effective school-based Medicaid administrative activities and medical services for our students with disabilities.**

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OFFICE OF THE SECRETARY
CORRESPONDENCE
CONTROL CENTER



Dr. Margaret A. Smith
Superintendent of Schools

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(386) 734-7190

Daytona Beach
(386) 255-6475

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(386) 427-5223

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School Board of Volusia County

Dr. Al Williams, Chairman
Ms. Judy Costa, Vice-Chairman
Ms. Candace Lankford
Mr. Stan Schmidt
Mrs. Diane Smith

October 5, 2007

The Honorable Michael Leavitt, Secretary
The U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Senator Leavitt:

Volusia County Schools wishes to formally file comment opposing Proposed Rule Change Medicaid Programs: Elimination of Reimbursement under Medicaid for School-Based Administration Expenditures and Certain Transportation Costs (CMS-2287-P). The rule change prohibits federal reimbursement for administrative and transportation costs associated with special education services for Medicaid eligible children. For our school district, this would mean the loss of funding which would help disabled children meet their health and learning needs.

Regardless of the source of funding, Volusia County Schools has a moral commitment to serve these children, as well as a federal statutory mandate. The loss of Medicaid funds would lead to the reduction of services to other district programs, including those serving regular students. This potential funding cut will have significant impact in light of the upcoming special session of the Florida legislature during which funding for public schools will be reduced by a minimum of four percent (approximately 9.6 million for Volusia County Schools).

On behalf of Volusia County Schools and other affected districts nationwide, we request your assistance. In the interest of our most vulnerable children we ask you to suspend implementation of CMS 2287. This will allow school districts to continue providing disabled children the support they desperately need.

Thank you in advance for your consideration and support. Please feel free to contact us at (386) 734-7190 for additional information.

Sincerely,

Margaret Smith, D. Ed.
Superintendent of Schools

Sincerely,

William Fink, Ph.D.
Director
Exceptional Student Education and Student Services

cc: School Board Members
Central Florida Public School Boards Coalition Superintendents

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National Association of State Directors of Special Education, Inc.

1800 Diagonal Road, Suite 320, Alexandria, VA 22314

Tel: 703/519-3800 • Fax: 703/519-3808 • www.nasdse.org

November 6, 2007

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

Re: Comments on Proposed Rule CMS-2287-P

On behalf of the National Association of State Directors of Special Education (NASDSE), the not-for-profit organization representing the state directors of special education in the states, the federal territories, the District of Columbia, the Department of Defense, the Bureau of Indian Affairs and the Freely Associated States, I appreciate this opportunity to comment on CMS Proposed Rule 2287-P.

NASDSE urges you to rescind this proposed rule, which was published in the Federal Register on September 7th. The proposed rule will have a devastating impact on virtually every state and local education agency that must, by law, provide services to students with disabilities. Some of these services are health-related, and as such, are Medicaid reimbursable. While the proposed regulation does not directly affect reimbursement for these services, a school district's inability to be reimbursed for administrative services related to the provision of the medically necessary services, will in fact have a chilling effect on a school district's ability to deliver these services. Furthermore, the proposed rule expressly contradicts the intent of the law 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.

NASDSE strongly opposes this proposal, which would deny schools reimbursement for legitimate, appropriate and necessary administrative services undertaken by school employees or their contractors and would virtually eliminate the ability of school districts to be reimbursed for transportation costs that up to now have been considered to be eligible for federal financial participation (FFP).

Cutting funding for Medicaid outreach, administrative costs and services in a school setting is neither sound fiscal nor social policy. In proposing this rule, CMS will impose a significant financial burden on local and state education agencies, estimated to cost more than \$3.6 billion over the first five years. The proposed federal savings of this rule represents less than 0.2% of 2006 federal Medicaid expenditures—a minimal impact on the CMS budget. The proposed rule represents a cost shifting — not a cost savings — from the federal government to state and local school districts that are obligated to provide these services. CMS has not provided any justification for this cost shifting.

We believe that the proposed rule:

1. contradicts the terms of the Medicaid statute that allows states to have flexibility in administering their state Medicaid plan and to collaborate with other state agencies;
2. exceeds Secretarial authority;
3. discriminates against local education agencies as providers of Medicaid services to eligible children and youth; and
4. unfairly penalizes all states and local education agencies for CMS' failure to provide oversight and guidance.

Flexibility and Collaboration

Under the federal-state Medicaid program, collaboration with other public agencies is a consistent statutory theme. 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 wrote in its *Medicaid School-Based Administrative Claiming Guide* (2002), "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." Without any public engagement whatsoever, CMS is now proposing to rescind the policy established by the *Guide*.

With respect to students with disabilities, Congress clearly intended to prohibit 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 (P.L. 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). Furthermore, IDEA explicitly references the use of Medicaid funds to cover the cost of medically related services provided to students with disabilities. New regulations promulgated after the law was reauthorized added a new section addressing the need for parent approval prior to submitting claims to Medicaid for reimbursement. The new regulations ensure that parents are aware that Medicaid is a source of funding for some of the services that their children are receiving in the schools or as required by the child's IEP.

Exceeds Secretarial Authority

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 Health and Human Services (HHS) finds that these activities performed specifically by school employees are not "necessary...for the proper and efficient administration of the State [Medicaid] plan."

Discriminates Against Local Education Agencies

We take exception to the Secretary's pronouncement. Secretarial authority in this regard cannot be construed to limit the power of states to (1) administer their plans; (2) act in

the best interest of beneficiaries; or (3) involve other agencies in the administration of their state plan. The Secretary proposes to eliminate an entire category of entities, e.g., local education agencies, from providing Medicaid-related services. The Secretary has not eliminated reimbursement for all administrative services under Medicaid, only those provided by schools. If these activities are not “necessary,” when performed by school personnel, we wonder why the Secretary has not proposed an all-out ban on all administrative services. The simple answer is because the law provides for reimbursement for these necessary services. The Secretary is only proposing to eliminate reimbursement for services provided by schools without taking into account the effectiveness of schools in providing these services, especially to students with disabilities. It would be extremely disruptive to a student’s academic day to have to leave school to obtain medically necessary services. In fact, these activities **are** absolutely necessary for the proper and efficient administration of the state Medicaid plan.

Failure to Provide Oversight and Guidance

The Secretary raises concerns about abusive billing. If that is indeed the case, it is CMS’ responsibility to provide guidance to school districts and states so that billing questions can be resolved. It should not be the reason for wiping out an entire program. CMS released a revised administrative claiming guide in 2002. Since that date, CMS has held no specific trainings or workshops to facilitate implementation of the guide. As a result, if CMS is concerned that the guide is not being followed, then it bears some of the responsibility for not taking any steps to ensure that the guide is properly adhered to.

Impact of the Proposed Rule

The loss of federal reimbursement for administrative and transportation services provided by school districts will have a devastating impact on a school district’s 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, and poor disabled students not receiving services in a timely manner. The loss of these funds could force districts to scale back their special education and special services personnel (e.g., school nurses, physical and occupational therapists and social workers), increasing the specialist-per-pupil ratio. Furthermore, school personnel would be less available to link children with community medical and health clinics and coordinate services required by a student’s IEP (e.g., occupational and speech therapies, counseling, dental and mental health care and clinic- or hospital-based services). Additionally, the loss of funding could affect services for all general education students, because if local education agencies are forced to spend more local (or state) to provide and coordinate medically necessary services, there will be less money to provide educational services to all students.

Medicaid’s transportation reimbursement has enabled school districts to continue to enhance buses with specialized equipment (e.g., ramps, lifts, seat belts and personal aides) for students with more severe disabilities. Some schools have used Medicaid transportation funds to hire more bus drivers to provide additional routes to transport students for medical services. Without these funds, these enhancements and personal care services will have to be eliminated or scaled back.

CMS is disingenuous when it states that this rule will not have a “significant economic impact” on local school districts. Schools stand to lose more than \$600 million in the first

year of the rule's implementation. This may very well be, as we note above, a very small component of the overall Medicaid budget, but it is not small change to the school districts and states that rely on this funding to maintain the quality of the services provided to students with disabilities. CMS may believe that it is not the agency's responsibility to fund special education services. Once again, we point to federal statutes that specifically allow Medicaid funding for these services (and indeed, in the case of IDEA's Part C Program for Infants and Toddlers, require such funding). Medicaid was originally enacted as a program to ensure that low-income children and families had access to health care. Low-income children *with disabilities* were not -- and are not -- excluded from the target population. Indeed, as our nation's most vulnerable children, it is incumbent that all federal agencies take the responsibility given to them by law, to ensure that their medical needs are provided for.

Again, thank you for the opportunity to comment on this proposed regulation. Should you have any questions, please feel free to contact me at nancy.reder@nasdse.org; (703) 519-3800, ext. 334.

Sincerely,

Nancy Reder, Esq.
Director of Government Relations
Deputy Executive Director



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TEXAS HEALTH AND HUMAN SERVICES COMMISSION

ALBERT HAWKINS
EXECUTIVE COMMISSIONER

November 2, 2007

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

Dear Sir or Madam:

I am writing to offer comments on the proposed rule regarding the Elimination of Reimbursement for School Administration Expenditures and Costs Related to Transportation of School-Age Children Between Home and School as published in the Federal Register on September 7, 2007. The Texas Health and Human Services Commission (HHSC), the single state Medicaid agency in Texas, objects to the elimination of Medicaid reimbursement for transportation between home and school for Medicaid-eligible special education students with a disability or chronic medical condition and for certain administrative activities performed by school districts.

In Texas, school-based Medicaid services are known as the School Health and Related Services (SHARS) program. Texas' Medicaid state plan amendment (SPA) relating to SHARS was approved by the Centers for Medicare and Medicaid Services (CMS), effective September 1, 2006. One of the services approved under the SPA, transportation services in the school setting, allows medically necessary transportation services to be provided to all Medicaid-eligible children on a specially adapted school bus to and/or from the location where the school-based services are provided when the Medicaid-eligible children are receiving SHARS school-based services the same day.

Currently, SHARS transportation services in the school setting is the third largest claim total of all 10 SHARS services. Under the proposed rule, states will no longer be able to claim federal financial participation (FFP) for SHARS transportation services in the school setting when transporting school-age children to and from school, even on days when they are receiving a SHARS service. Although the exact percentage is unknown, HHSC believes that transportation from home to school and back constitutes the largest percentage of SHARS transportation services in the school setting. These transportation services are essential for allowing access to

Centers for Medicare & Medicaid Services

November 2, 2007

Page 2

medically necessary Medicaid services for eligible children. Eliminating reimbursement for transportation services from home to school and back for school-age children with SHARS transportation identified as a medically necessary service in their Individualized Education Program plan will have a significant negative fiscal impact on the school districts.

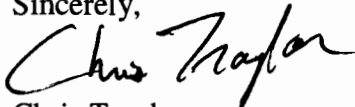
In Texas, the program that facilitates FFP claims to CMS for school-based administrative activities is called Medicaid Administrative Claiming (MAC). MAC is being conducted by school districts in order to recover the costs of assisting clients to access Medicaid services, including Medicaid outreach, eligibility intake, and information and referral.

The MAC program is conducted in accordance with CMS guidance on school-based claiming in the Medicaid School-Based Administrative Claiming Guide published by CMS in May 2003. Texas Independent School Districts receive approximately \$12.6 million in MAC funding on an annual basis.

CMS recently approved a SPA regarding the SHARS and MAC programs. The Random Moment Time Study (RMTS) was approved by CMS as the methodology to ensure that direct service and administrative costs are correctly and independently accounted for in the school districts. The use of the RMTS to capture these costs should alleviate CMS's concerns regarding the dual billing/payment of direct service and MAC activities performed by Texas Independent School Districts.

If you need more information or have any questions about this letter, please contact Emily Zalkovsky, Policy Analyst in the Medicaid and CHIP Division, at (512) 491-1482 or by e-mail at emily.zalkovsky@hhsc.state.tx.us.

Sincerely,



Chris Traylor
State Medicaid Director

ACUSHNET PUBLIC SCHOOLS
SPECIAL EDUCATION DEPARTMENT



146
800 MIDDLE ROAD
ACUSHNET, MASSACHUSETTS 02743

TELEPHONE (508) 998-0258
FAX (508) 998-8321

Danielle Coffin
Special Education Administrator

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

November 6, 2007

Dear Sir(s) or Madam(s):

Attached is a letter expressing my concern about the effect that the proposed elimination of reimbursements for transportation and administrative claiming under Medicaid will have on the welfare of children with disabilities.

Our school district received \$198,000 in Medicaid reimbursements last year. This money is of great value to us in providing services to our students. Thank you for considering my concerns.

Sincerely,

A handwritten signature in cursive script that reads "Danielle D. Coffin".

Danielle D. Coffin
Special Education Administrator

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.

Danielle D. Coffey
Special Education Administrator
Acushnet Public Schools

147

Cedarville University
Department of Education
251 N. Main St.
Cedarville, Ohio 45314

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
November 5, 2007

Dear Sir(s) or Madam(s):

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Introduction

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

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

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

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

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

Federal Cost Shifting and Reduced Levels of Service

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

Conclusion

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

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

Respectfully,

A handwritten signature in black ink that reads "Margaret Grigorenko". The signature is written in a cursive style with a large, looped initial "M".

Margaret Grigorenko
Assistant Professor of Education