



[www.councilofcollaboratives.org](http://www.councilofcollaboratives.org)

600 Bruce Street Crookston Minnesota 56716

November 28, 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 Northwest Minnesota Council of Collaboratives, I am 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. I 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. In Northwestern Minnesota, six of these county collaboratives have joined to form the Northwest Minnesota Council of Collaboratives. This unique affiliation of 53 public and private non-profit organizations includes 22 school districts, six county social service agencies, two law enforcement agencies, four Community Action Programs, six counties, two community correction agencies, three public health agencies, one mental health agency, one special education district and six county collaboratives. Since the beginning this affiliation, the Council of Collaboratives has been successful in providing expanded services to children and families living in northwestern Minnesota.

Programs have included services ranging from universal public health visits to truancy prevention services, from family support to school social workers, from co-located school based services to mental health interventions for severely emotionally disturbed children. The Northwest Minnesota Council of Collaboratives strives to:

- 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.

CMS-2287-P  
~~CMS-4129-P1~~

158

**Submitter :** Mrs. Tamara Uselman  
**Organization :** Perham - Dent Public Schools  
**Category :** Academic

**Date:** 11/16/2007

**Issue Areas/Comments**

**GENERAL**

GENERAL

see attachment

CMS-4129-P-2-Attach-1.DOC

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, MD 21244

RE: File code CMS-2287-P

Dear Centers for Medicare and Medicaid Services:

On behalf of the Perham – Dent School District, I am 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 and transportation costs for services provided to students with disabilities as required by the Individuals with Disabilities Act (IDEA). We urge you to withdraw implementation of the proposed rule since we believe promulgation will be harmful to the most vulnerable of our school district's children - those with disabilities who are also members of low-income families.

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.

The Medicare Catastrophic Coverage Act of 1988 allows school districts to receive Medicaid payments for health services delivered to Medicaid eligible children. Children with disabilities are often in need of additional services, including transportation for diagnostic, preventive and rehabilitative services and therapies, as well as the administrative costs of providing school-based services, such as outreach for enrollment purposes, coordination and/or monitoring of medical care. A rule to prohibit schools for claiming these expenses would contradict existing law and seriously impede the ability of states and school districts to provide these services, which are mandated under IDEA.

The federal government is only funding approximately 20 percent of the national average per pupil expenditure for each child in special education instead of the 40 percent that Congress promised to pay when IDEA was first enacted. Major reductions in Medicaid reimbursements will severely restrict the ability of states and local school districts to provide much-needed 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 consistent with the No Child Left Behind goals and objectives.

Thank you for your time and consideration.

Sincerely,

Tamara Uselman, Superintendent



Leaders for Learning

October 30, 2007

OPTIONAL FORM 99 (7-90)

## FAX TRANSMITTAL

159  
# of pages = 9

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NSN 7540-01-317-7368	5089-101
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Secretary Michael O. Leavitt  
Department of Health and Human Services

Administrator Kerry Weems  
Centers for Medicare and Medicaid Services  
Attention: CMS-2287-P  
Mail Stop S3-14-22, 7500 Security Boulevard  
Baltimore, MD 21244

In re: CMS 2287-P

Dear Secretary Leavitt and Administrator Weems:

On behalf of the 136 local boards of education represented by the Alabama Association of School Boards (AASB) and the children who benefit from school-based Medicaid activities and services, we submit these comments to proposed CMS rule 2287-P. AASB appreciates the opportunity to provide comments and requests CMS to carefully consider these objections to the proposed rule.

Schools play a singular, vital role as the most accessible and logical place to target outreach efforts to identify disabled children eligible for Medicaid services. The proposed CMS rule would effectively prohibit school systems from claiming federal reimbursement for these services. The loss would result in children not being identified and/or receiving these services in a timely manner.

The purpose of the proposed rule is to eliminate funding for activities that are performed by school systems in furtherance of both their state Medicaid plans and the federal statutory requirements of EPSDT and IDEA. AASB strongly opposes this rule and urges CMS withdraw it in favor of current statute and CMS promulgated regulations with respect to Medicaid Administrative Claiming. In particular, we believe that CMS 2287-P represents bad public policy and is based on a misunderstanding of claiming by school systems for administrative costs under their state Medicaid plans.

**Issue 1: Basis for Secretary's finding faulty**

The proposed rule is predicated on the Secretary's finding that:

*"The proposed rule would eliminate reimbursement under the Medicaid program for the costs of certain activities based on a Secretarial finding that these activities are not necessary for the proper and efficient administration of the State plan, nor do they meet the definition of an optional transportation benefit."*

SERVING  
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CMS relies on its authority under §1903(a)(7) of the Social Security Act, which limits reimbursement to costs "found necessary by the Secretary for the proper and efficient administration of the state plan." However, CMS substantiates this finding only from references to dated reviews and audits performed prior to any consistent and formalized claiming guidance by CMS. These audits are no longer applicable to current conditions under which states are claiming (see Issue 2 below) and do not support the finding that the *activities* performed in the schools are not necessary for the state plan. CMS has already recognized and substantiated the role of schools in regards to the state Medicaid plans and the legal basis for reimbursing their administrative costs.

The CMS MAC Claiming Guide issued in 2003 states:

*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. Medicaid, a joint state-federal program, offers reimbursement for both the provision of covered medical services and for the costs of administrative activities, such as outreach, which support the Medicaid program.*

To find that the costs of administrative activities are not necessary to the state plan, the Secretary must determine that the *activities themselves* are not necessary for the state plan. In its memorandum in support of the proposed rule, CMS states:

*...the proposed rule does not bring into question the legitimacy of the types of Medicaid administrative activities provided in schools.*

Since CMS finds that the activities performed in the schools are legitimate and therefore consistent with the administration of the state Medicaid plan, how can the Secretary conclude that the "*these activities are not necessary for the proper and efficient administration of the State plan*"? The Secretary's finding is without basis and should be withdrawn.

## **Issue 2: Dated negative reviews/audits successfully addressed by CMS in 2003**

In its August 31 press release regarding the proposed rule entitled "CMS PROPOSES IMPROVEMENTS TO MEDICAID PAYMENTS FOR SCHOOL-BASED ADMINISTRATION AND TRANSPORTATION," CMS cites as justification that improper billing by school systems for administrative costs and transportation services is a longstanding concern because the programs are susceptible to waste and abuse. The press release cites several reports that raised these concerns.

We take exception with both the use of these reports as justifying the proposed rule and the sweeping generalizations they imply. Many of the reviews that were conducted were in direct response to the concerns expressed by the Congress that CMS was not providing adequate guidance to states with respect to administrative claiming and was providing insufficient, inconsistent oversight. Also, the cited reviews were all conducted for time periods preceding the 2003 MAC Claiming Guide and, in many instances, auditors applied draft and proposed guidelines in the conduct of their audits.

CMS presents the problems as if both current and rampant. Neither is the case. Since CMS issued its MAC Claiming Guide in May 2003, all states have followed the nationally set standards and methods spelled out in the guidelines. Nothing CMS presents in its fact sheet is relevant to the current state of the program.

Accordingly, it is unfair and unjustified to base a finding and proposed rule on audits that have little or no relevance to current practice. It is the current status that the proposed rule is meant to address, not the past.

### Issue 3: Limiting reimbursement costs to state agencies would be bad public policy.

CMS introduces a new policy that restricts Medicaid reimbursement based on whose employees provide the activities.

CMS explains that:

*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 Medicaid agency.*

The CMS rule does not entirely eliminate federal matching funds for administrative activities performed and claimed by states under their state Medicaid plan. To do so would be unquestionably in conflict with statute and CMS regulations. Rather the proposed rule would expressly eliminate federal matching funds solely for activities "...conducted by school employees or contractors, or anyone under the control of a public or private educational agency..." This position is unsupported by current law.

Schools bring obvious benefits to administering the state Medicaid plan. The argument that administrative activities are reimbursable so long as they are not performed by a school is in direct conflict with decades of practice by states in which a variety of governmental entities in addition to the Medicaid agency are involved in reimbursable administrative activities. The flexibility afforded states is demonstrated in the various systems each state has established for determining eligibility, case management, and payment to providers for services and to other agencies for administration.

To suggest that any arrangement put in place by a state to support its Medicaid plan is allowable except if it includes schools makes no sense and runs counter to both sound practice and the Medicaid statutes that grant states administrative flexibility. Further, denying reimbursement to schools playing an integral part in administering the state Medicaid plan is not justifiable when CMS's 2003 Claiming Guide states:

*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. Medicaid, a joint state-federal program, offers reimbursement for both the provision of covered medical services and for the costs of administrative activities, such as outreach, which support the Medicaid program.*

Discriminating against schools by denying reimbursement for the same activities as performed by other agencies is not only bad policy but is contrary to current law. As long as the federal-state partnership for the financing of Medicaid exists, states have the right to determine the most appropriate means for administering their state plans and which agencies can most effectively and efficiently support the program. It is widely acknowledged, including by CMS, that schools provide a vital and extremely effective means of identifying and referring eligible children to Medicaid services. Schools provide the

most consistent and comprehensive access to children who need Medicaid services of any organization and are in an excellent position to support the administration of the state Medicaid plan.

#### **Issue 4: CMS is exceeding its authority**

CMS is exceeding its authority under section 1903(a)(7) of the Social Security Act and the related regulations. CMS states:

*... this proposed rule would supersede the prior guidance and would represent the Secretary's determination that Medicaid expenditures for such 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.*

In attempting to supersede current policy, CMS is not only exceeding its own authority under current law but is attempting to effectuate policy changes administratively that previously were rejected legislatively by the Congress.

The proposed rule's reliance on the Secretary's finding with respect to the proper and efficient administration of the state Medicaid plan is unsubstantiated and therefore the basis for the proposed rule is invalid. Additionally, it is not within CMS's authority under the statute to deny reimbursement to a state that is relying on schools to perform allowable administrative activities in support of the state's Medicaid plan. Therefore, the legal basis underpinning the proposed rule is faulty and in proposing to single out schools to eliminate federal matching funds exceeds CMS's authority.

#### **Issue 5: Medicaid Administrative Claiming program is an example of "best practice"**

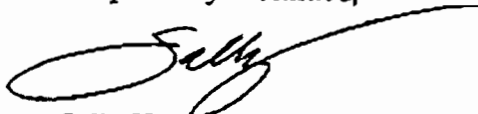
CMS should be commended for making significant progress in assuring program integrity in the Medicaid Administrative Claiming program. Since 2000, CMS's MAC Claiming Guide has standardized allowable costs and acceptable methodologies and institutionalized a process for CMS to review state implementation plans. Significant resources have been added to the audit staffs of both CMS and the OIG and state audits and reviews have occurred with greater frequency. Additionally, coordination between the national and regional offices has improved and the guidance that is now being given to states is more consistent than ever. The program staff at CMS has been heavily involved in reviewing state plans and serve as helpful technical resources to the states.

We, therefore, find it hard to explain why after successfully addressing all the concerns raised by the Congress and bringing integrity and accountability to a program that represents less than one percent (1%) of national Medicaid expenditures CMS is proposing a rule that would eliminate reimbursement to schools. Claiming in schools should be held out as a best practice by CMS and the improvements that have already been successfully made should be a model for other programs reimbursed by Medicaid. To eliminate funding for mandated administrative activities that take place in schools at this time would be a mistake.

We respectfully submit these comments in the spirit of openness and transparency and believe CMS has made so many forward steps in improving the program that it would be counter productive to issue the proposed rule. When it comes to identifying, referring and linking Medicaid-eligible children to needed services, it goes without question that schools provide a vital and effective link to Medicaid and are an essential part of the administration of the state Medicaid plan.

Accordingly we request that proposed CMS 2287-P be withdrawn.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sally", with a long, sweeping horizontal line extending to the right.

Sally Howell, J.D.  
Executive Director

SH/lt





HOUSE OF REPRESENTATIVES  
ALABAMA STATE HOUSE  
MONTGOMERY, ALABAMA 36130

160

DISTRICT NO. 39  
CHEROKEE, CLEBURNE AND  
DEKALB COUNTIES

COMMITTEES:  
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November 5, 2007

Control  
Kerry  
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Molly  
OL  
CMSO

Secretary Michaela Leavitt  
Department of Health and Human Services

Administrator Kerry Weems  
Centers for Medicare and Medicaid Services

In re: CMS2287-P

Dear Secretary Leavitt and Administrator Weems:

As chairman of the House Education Appropriations Committee that is responsible for crafting the state education budgets each year, I take exception to the proposed rule CMS 2287-P which would effectively end the Medicaid Administrative Claiming (MAC) program for Alabama schools.

To learn that another federal mandate which requires action by our schools would remain while its funding (or reimbursement) is withdrawn causes us great concern. Alabama's state and local education budgets simply cannot assume that debt. There is no additional local or state resource to tap as we struggle to meet the needs of all of our students each year. Economic forecasts indicate that state revenue growth rates will not meet projections and this will challenge state and local budgets to simply fund existing academic programs for our local schools. To end reimbursement for Medicaid outreach and put that cost on local schools would add insult to injury for our schools.

Our state Medicaid Agency indicates that the MAC program is a legitimate part of their state plan and has been successfully implemented in Alabama. It provides an avenue where children can be reached-at school. Our congressional delegation has been supportive of this plan and believes that the proposed rule would abrogate congressional intent. The program is achieving its goal of identifying children who are eligible for Medicaid and ensuring they receive services in their schools and communities. Every indication is that the program has been unjustly targeted and will be yet another unfunded mandate for local schools.

SPENCER BACHUS  
8TH DISTRICT, ALABAMA

COMMITTEE:  
FINANCIAL SERVICES  
RANKING REPUBLICAN MEMBER

101

**Congress of the United States**  
**House of Representatives**  
**Washington, DC**

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November 6, 2007

**VIA FACSIMILE 202-690-6262**

Mr. Kerry Weems  
Acting Administrator  
Centers for Medicare and Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244-1849

Dear Mr. Weems,

I am writing to express my concern over Center for Medicare and Medicaid Services (CMS) proposed rule CMS 2287-P. The Rule would effectively prohibit Medicaid reimbursement for administrative activities to local schools through the Medicaid Administrative Claiming Program.

This valuable program identifies needy children within Alabama and matches these children to services in schools and their community. This program ensures that needy children are able to take advantage of beneficial services. The pragmatic approach and partnering among agencies to enable these services to be performed in schools is to be commended and should be continued. Please consider the effects of the proposed rule on this partnership that has emerged in my state and the many students that benefit from the program.

Please accept my comments and I urge you to consider the value of the Medicaid Administrative Claiming Program.

Sincerely,



Spencer Bachus  
Member of Congress

STB/PMS



Terry B. Grier, Ed.D.  
Superintendent

FMG  
Brown  
Wallace  
1402

October 31, 2007

Mr. Dennis G. Smith  
Director  
Center for Medicaid and State Operations  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Mr. Smith:

This letter serves to inform the Center for Medicaid and State Operations (CMS) that Guilford County Schools (GCS) is absolutely opposed to the proposed cuts in Medicaid reimbursement. Medicaid reimbursement for legitimate and desperately needed school-based services is essential to the provision of services to eligible children with disabilities in North Carolina

Long experience in many communities has shown that schools are the single location where students in need of such services, as well their families, can be reached most efficiently. GCS understands that CMS must address inappropriate claiming on the part of some school districts across the country -- that is the purpose of the audit process. Instead of eliminating federal financial participation for costs of effective activities that serve Medicaid-eligible students in schools, CMS should develop reasonable guidelines and criteria to guide schools in better identifying eligible children, promoting efficient access to Medicaid services and providing needed care.

Congress and the federal government have for many years encouraged Medicaid to share in schools' costs for meeting the medical needs of students with disabilities. Given the growing number of uninsured children who lack access to basic health care and the impact this has on their ability to learn, it is vital that Medicaid share in schools' costs to see that children's essential health needs are met. It is clear that good health is essential to academic achievement for children. Every school in North Carolina deals with students who come to school each day with untreated medical, dental and mental health conditions. We are facing rapidly rising numbers of school-age children affected by obesity, substance issues, pregnancy and suicide. School systems simply cannot do this alone.

Now is not the time to further limit schools' resources. Without the ability to participate in the Medicaid reimbursement system we will be less able to ensure that all children in North Carolina receive the education they need to become productive citizens.

Guilford County Schools is deeply committed to helping students achieve their potential. We strongly urge CMS to continue school-based Medicaid administrative activities and state plan-covered services as an effective and efficient means of addressing children's health needs and education.

Sincerely,

Terry B. Grier, Ed.D.

**STRIVING. ACHIEVING. EXCELLING.**

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