



November 5, 2007

Mr. Kerry N. Weems
Acting Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Hubert H. Humphrey Building, Room 445-G
200 Independence Avenue, SW
Washington, D.C. 20201

Re: CMS-2287-P: Comments on Proposed Rule Medicaid Program; *School-Based Administrative Costs and Transportation To and From School, 72 FR 51397*

Dear Mr. Weems:

The American Public Human Services Association and its affiliate, the National Association of State Medicaid Directors, respectfully submit this comment letter on the elimination of reimbursement for school administration expenditures and costs related to transportation of school-age children between home and school, published in the September 7, 2007, *Federal Register* (72 FR 51397) for the Centers for Medicare and Medicaid Services.

Please be assured that APHSA and NASMD share your strong commitment to protecting the fiscal integrity of the Medicaid program. We appreciate the opportunity to work with CMS to develop proposals and guidance that will provide consistency and stability to the Medicaid program while serving those in need. However, we submit that the agency's proposed rule creates some additional challenges for states to achieve this goal.

Schools play a vital role as a partner with the Medicaid program to provide important services to children. As active participants in the daily activities of their students, schools have a unique ability to enroll hard-to-reach or at-risk youth that would otherwise go without benefits. In addition, the school offers easy access to benefits for those already enrolled in Medicaid.

We disagree with CMS's proposal to eliminate all Medicaid administrative funding for all schools due to funding problems with a few schools. Rather than arbitrarily eliminating all funding, CMS should focus its efforts on working with states to ensure proper claiming. Schools provide critical administrative services including supporting outreach and enrollment of children into Medicaid. CMS has placed great focus on enrolling eligible but unenrolled children into

*National Association of State Medicaid Directors
810 First Street, N.E., Suite 500
Washington, DC 20001
202-682-0100
www.nasmd.org*

Medicaid and S-CHIP and CMS's action here to cut the funding for schools to enroll children is contradictory to CMS's position that states should enroll eligible children. Schools are a logical place for states to focus enrollment activities to meet our collective goal of enrolling all eligible children. To take the position, as CMS does, that states should send eligibility workers to every school open house or parent event does not reflect the reality of the volume or number and variety of events that occur nor the logistics that would be involved in replacing the use of school employees to do outreach with state or county eligibility workers. Beyond the impossible logistics involved, states would have to hire thousands of eligibility workers to do this work, at far greater cost than the cost of funding schools to do outreach and assist in completing applications. It is far more logical to have schools include enrollment into Medicaid into a feature of their school events and reimburse schools for these activities.

School-based administrative activities

School-based administrative activities are integral for the proper and efficient administration of the State Plan. In fact, states are required to provide potential beneficiaries opportunities to apply for Medicaid at locations other than state agency offices. Therefore, AHPA and NASMD disagree with the proposed rule's assertion that school-based administrative activities are not integral for the proper and efficient administration of the State Plans. Studies by the Kaiser Commission and by the George Washington University have found that parents are much more likely to enroll their children in Medicaid if they can do so at convenient locations within the community, such as a doctor's office or clinic, or a school or day care center.

In 2003, CMS issued its School-Based Guide that states and schools were to follow in claiming. There has been no CMS review or evaluation of state compliance with this Guide and there is no evidence that states are abusing this claiming Guide. There is no basis to eliminate all funding when in fact there is no evidence on how well CMS's current guidance is working.

Past CMS guidance has actually encouraged states to expand efforts to enroll families in the Medicaid program, in a letter sent by former Secretary of Health and Human Services, Timothy Westmoreland. Among the list of suggested sites for enrollment and outreach activities, were schools and other programs that provide support services. In addition, the letter gave states permission to "use State employees, provider or contractor employees, or volunteers who have been properly trained to staff outstation locations" and to "outstation eligibility workers at any location that they believe will help facilitate the enrollment of families and children into Medicaid." In addition, the CMS technical assistance guide published in 1997 states that, "schools present a wonderful opportunity for Medicaid outreach." Without an effective school-based outreach program, many children would not be linked to Medicaid eligibility and necessary care and services.

The proposed rule claims that it does not bring into question the legitimacy of the outreach activities or the appropriateness of the setting but rather alleges that there is inconsistent application of the Medicaid requirements by schools. However, the proposed rule does not acknowledge the fact that states received minimal guidance during the development of their initial State Plans for these services. Since development, CMS has been rigorous in auditing and revising the outreach program methodologies. In addition, most states perform Random Moment Time Studies (RMTS) to identify properly covered activities and allocate the administrative cost

between what is educational and what is Medicaid-related. To infer that only the school-based allocation methodology is invalid while CMS permits similar allocation procedures for various other programs can only be viewed as singling out this program.

The fact that schools are able to provide outreach on behalf of Medicaid to the majority of children in one setting is both cost effective and an efficient care delivery mechanism. The Federal Financial Participation (FFP) has historically been available for expenditures incurred by the state associated with outstation locations, regardless of whether the function is provided by an employee of the state or with another person authorized by the state to perform these activities. To implement a rule that would prohibit FFP to schools for Medicaid-supporting administrative activities would disregard existing law, contradict long-standing Medicaid policy, and impede Congressional intent.

Transportation from home to school and back for school-age children

APHSA and NASMD contend that continued Medicaid coverage for transportation is an integral part of the State Plan because the child is being transported to a recognized Medicaid provider for Medicaid covered services. In fact, Medicaid policy regarding medical transportation does not restrict the beneficiary from participating in any other activity before returning home from the place of treatment.

Additionally, the proposed rule states that “students receive transportation from home to school and back regardless of whether or not they are determined eligible for special education services.” This is an inappropriate comparison of specialized transportation services for children with significant medical health problems and traditional student bus transportation. States set forth conditions that need to be met in order for a student to qualify for the transportation benefit. For example, the state of Michigan sets forth six conditions that have to be met in order for the specialized transportation services to be billed to Medicaid. The services can only be provided to a child that is Medicaid and special education eligible. Also, the service needs to be medically necessary, provided on a special education specialized bus, and documented in the IEP/IFSP. Finally, the service must be provided on the same date that a Medicaid covered service is received.

In addition, the proposed rule states that “FFP would no longer be available for the costs of transportation from home to school and back for school-age children with an IEP or IFSP established pursuant to the IDEA.” This proposed rule runs counter to the Medicare Catastrophic Coverage Act which prohibits the Secretary from denying FFP for Medicaid covered services because they are included in an IEP/IFSP. Therefore, transportation is a Medicaid covered service and should not be excluded from receiving federal matching funds.

Regulatory Impact Statement

While the proposed rule states that the impact on local school districts is not significant, states are reporting that is not necessarily the case. While states are given the opportunity under the proposed rule to continue funding school-based administrative activities without federal Medicaid funding from CMS, it is unrealistic to assume that any state would be able to afford to do so. The Medicaid program was intended to be jointly funded by the state and federal governments. Exclusion of FFP for costs that have previously been shared by CMS will result in

a reduction of elimination in service, since states will be unable to sustain the costs on their own. Contrary to CMS' interpretation, APHSA and NASMD believe that implementation of the proposed rule will place a significant financial burden on local school districts to either identify funds to preserve existing programs currently funded with Medicaid reimbursement dollars or to eliminate those programs altogether.

Medicaid is the nation's safety net, and it is important for CMS to reexamine the effects that all of these proposed restrictions will have on states. This proposed rule would restrict the ability for Medicaid funds to be used to train the next generation of doctors, serve as the foundation of local emergency response systems, and provide coverage to the nation's uninsured and underinsured.

Thank you for the opportunity to comment on the proposed rule. If you have any additional questions, please contact Martha Roherty, NASMD Director, at (202) 682-0100.

Sincerely,



Jerry W. Friedman
Executive Director
American Public Human Services Association



David Parrella
Chair, Executive Committee
National Association of State Medicaid Directors