



November 6, 2007

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Dear Sir:

The Virginia Council of Administrators of Special Education (VCASE) is a non-profit professional organization of 361 Virginia administrators of special education programs, committed to improve the quality of education for children with disabilities. VCASE is a division of the Council of Exceptional Children (CEC), which is the largest professional organization of teachers, administrators, parents and others concerned with the education of children with disabilities.

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As an active member of VCASE, I am writing in response to the August 13, 2007 Federal Register announcement requesting public comment on the Notice for Proposed Rule Making for Coverage for Rehabilitative Services under the Medicaid program. Rule 2287 proposes cuts to Medicaid reimbursements for school-based services. The Centers for Medicare and Medicaid Services (CMS) proposes to eliminate reimbursement, under Medicaid, for school administration expenditures and costs related to the transportation of school-age children between home and school. My colleagues of the Virginia Council of Administrators of Special Education and I are adamantly opposed to this proposal.

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VCASE joins other national organizations, such as CEC, National Association of State Directors of Special Education, National Education Association (NEA), and the American Association of School Administrators (AASA), in their concern about the devastating impact that the proposed Centers for Medicare and Medicaid Services' (CMS) regulations for the services option will have on the welfare of children with disabilities.

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

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The civil rights law, the Individuals with Disabilities Education Act of 2004 (IDEA), entitles children with disabilities to a free, appropriate public education and early intervention services in conformity with an individualized education program (IEP) and an individualized family service plan (IFSP). An IEP/IFSP is developed for eligible individuals with disabilities and describes the range of services and supports needed to assist children in benefiting from their educational/ developmental opportunities. 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 automatic funding source. For years, the Federal government has failed to provide anywhere near the level of funding promised in the IDEA statute. In 1988, the Congress addressed the issue in enacting the Medicare Catastrophic Coverage Act of 1988 (Public Law 100-360) in which it clarified that Medicaid coverage is available for Medicaid services provided to Medicaid-eligible children under an IEP/IFSP. States' ability to appropriately rely on Medicaid funds for Medicaid services provided to Medicaid-eligible children pursuant to an IEP/IFSP 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 potential.

Federal financial participation in the costs of outreach, informing, and care coordination is available to all public entities performing such activities on behalf of the Medicaid program. Cutting funding for these activities in the school setting is not sound fiscal or social policy. Virginia public school divisions have been participating in Administrative Claiming since January 2003. Since that date, school divisions have received \$30,856,543 for administrative activities. At this time, 96 school divisions are participating in the program in Virginia. School divisions would continue to provide these services, but would have to shift funds from other areas in their budgets to cover the costs or raise taxes if this proposal becomes a reality.

The elimination of these reimbursements would inevitably shift the financial responsibility for claims to individual school districts. There is no corresponding increase in funding for the federal special education law, the Individuals with Disabilities Education Act of 2004 (IDEA), that will enable schools to make up for the reduction in Medicaid reimbursements for services option provided to children with disabilities.

While the Americans with Disabilities Act (ADA) does not apply to federal administration of Medicaid, we believe that this policy violates, at a minimum, the spirit of the ADA, wherein the Congress was intending to impose a comprehensive national prohibition against discrimination on the basis of disability.

The Congress could not have been clearer in its intent that it wants Medicaid to support the goals of IDEA; we believe that these narrow interpretations of the law are inconsistent with that intent. For these and other reasons, we urge the Secretary to withdraw the proposed rule.

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

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

Thank you for allowing the public to provide comments on Medicaid Program; Coverage for Rehabilitative Services and for considering VCASE's recommendations.