



November 6, 2007

Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
Attn: CMS-2287-P  
Post Office Box 8017  
Baltimore, Maryland 21244-8017

**RE:** Comments to Docket Number CMS-2287-P

Administrator McClellan:

On behalf of the more than 1,500 member organizations of the American Public Transportation Association (APTA), I write to provide comment on the Centers for Medicare and Medicaid Services' (CMS) Notice of Proposed Rulemaking (NPRM) concerning Elimination of Reimbursement Under Medicaid for School Administration Expenditures and Costs Related to Transportation of School-Age Children Between Home and School, published September 7, 2007, at 72 FR 51397.

### **About APTA**

APTA is a non-profit international trade association of more than 1,500 public and private member organizations, including transit systems; planning, design, construction and finance firms; product and service providers; academic institutions; and state associations and departments of transportation. More than ninety percent of Americans who use public transportation are served by APTA member transit systems.

### **The Proposed Rule Will Force States to Splinter Coordinated Transportation Plans or Lose Federal Funding**

The determination that transportation is "only necessary for the proper and efficient administration of the State plan when conducted by employees of the State or local Medicaid agency" flies in the face of the concept of coordinated transportation planning dictated by Executive Order 13330 (EO 13330), *Human Services Transportation Coordination*, issued February 24, 2004. That Executive Order directs the Secretary of Health and Human Services to promote interagency cooperation in the provision of transportation services. To determine that transportation is only necessary when performed 'in-house' directly contradicts EO 13330 and fails to recognize the efficiencies available when transportation is a coordinated undertaking. Moreover, it is unlikely that most local agencies could economically or practically substitute 'in-house' services for those available through partnership with local public transportation agencies.

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William W. Millar

The proposed rule should be withdrawn and the matter submitted to the Interagency Transportation Coordinating Council, created by EO 13330, to ensure any future CMS rulemaking remains consistent with the United We Ride Program and the Executive Order.

### **The Proposed Rule Abandons Long-Standing Practices Without Authority**

As recognized in the NPRM itself, this rule abandons CMS' own guidance, specifically the May 2003 "Medicaid School-Based Administrative Claiming Guide," CMS' May 21, 1999 letter to State Medicaid Directors, and the 1997 guidance in "Medicaid and School Health: A Technical Assistance Guide." Although the underlying statutory basis for transportation services has not changed in any significant aspect and no change in underlying facts is cited, CMS seeks to reinterpret that statutory basis as it applies new definitions of necessity. With at least ten years of guidance issued by CMS and intervening reauthorization of the program, it is clear that Congress believes the long standing practices were consistent with Congressional intent. We believe it is beyond CMS' authority to make this drastic alteration in the program without specific legislative direction.

### **The Proposed Rule is a Poor Response to Perceptions of Abuse**

The NPRM discusses, in section I.D., CMS' concerns with fraud, abuse, and improper allocation of costs. Rather than address specific concerns or allegations, CMS has elected to eliminate virtually all reimbursement for school transportation, without regard to necessity. We suggest this draconian response is not only unwise but, as explained above, effected without legislative authority and should be immediately rescinded. CMS' admitted inability to adequately regulate or oversee its program does not justify ending the program.

### **This Proposed Rule Would Effectively Transfer the Costs of Transporting Children to Local Public Transportation Agencies**

The result of this proposed rule is inescapable – the \$3.6 billion dollars cited in the NPRM would amount to a \$3.6 billion burden on state and local authorities. Public transportation agencies, already overtaxed by the most extensive ridership in 50 years would find themselves responsible for unreimbursed expenses of transporting thousands of students in complementary paratransit services designed for persons whose disabilities limit them from using fixed route transit services.

Taken together with CMS' August 24, 2007 proposal to severely limit reimbursement for non-emergency medical transportation services provided by public transportation agencies (Notice of Proposed Rulemaking, Non-Emergency Medical Transportation, 72 FR 48604, docket number CMS-2234-P, this amounts to a major abdication of CMS responsibility and an unprecedented shift of financial burdens from CMS to state and local authorities and their public transportation agencies. Clearly, CMS' analysis under the *Unfunded Mandates Reform Act* and otherwise is substantially flawed. To conclude that local government *always* had the responsibility to pay these massive costs but that CMS has somehow gratuitously provided funding over the years

is disingenuous, at best. This NPRM represents an unfunded mandate and violates the *Unfunded Mandates Reform Act*.

Moreover, stressing the state and local governments with the additional financial burden of this proposed rule threatens the ability to provide paratransit services to the ever growing population of seniors and persons with disabilities. In attempting to reduce federal outlays, the proposed rule would damage the availability of transportation services to the seniors and persons with disabilities most reliant on those services. This insufficiently explored impact on state and local governments is an additional reason this proposed rule should be withdrawn in favor of additional study and coordination.

We greatly appreciate the opportunity to assist CMS in coordinating human services based transportation services and stand ready to provide information, research, or other assistance necessary in fully exploring the consequences of proposed strategies. For additional information, please contact James LaRusch of APTA's Executive Office at (202) 496-4808 or [jlarsch@apta.com](mailto:jlarsch@apta.com).

Sincerely yours,

A handwritten signature in black ink, appearing to read "William W. Millar". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

William W. Millar  
President

WWM/cbo