September 24, 2007

Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attn: CMS-2244-P
Post Office Box 8017
Baltimore, Maryland 21244-8017

RE: Comments to Docket Number CMS-2234-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 Non-Emergency Medical Transportation, published August 24, 2007, at 72 FR 48604.

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 Improperly Endorses Transferring the Costs of Transporting Patients on Local Public Transportation Agencies

While we appreciate CMS’ efforts to provide maximum flexibility to state and local governments, one aspect of the proposed rule would be devastating to the public transportation agencies funded by those same state and local governments. Specifically, proposed section 440.170(a)(4)(ii)(B)(4)(iii) addresses requirements applicable when a state or local government creates a transportation brokerage to provide non-emergency medical transportation. That subsection would require the government brokerage to document that the “Medicaid program is paying no more than the rate charged to the general public.” It is this requirement that would effectively transfer the vast majority of these transportation costs from the federally supported Medicaid program to locally funded public transit agencies.

Mandated by the Americans With Disabilities Act and 49 CFR Part 37, public transportation agencies operating fixed route bus service must provide complementary
paratransit service to persons whose disabilities limit them from using fixed route services. These services must be provided at a cost to the rider of not more than “twice the fare that would be charged to an individual paying full fare (i.e., without regard to discounts) for a trip of similar length, at a similar time of day, on the entity’s fixed route system.” 49 CFR 37.131(c). The cost of an average paratransit trip in 2005 (the latest year for which statistics are currently available) was over $22.62. Public Transportation Fact Book, 58th Edition, May 2007, Tables 6 and 48. Clearly, even twice the fare of a typical bus trip cannot defray more than a small fraction of that cost.

To further burden the state and local governments that fund the operation of public transportation with additional paratransit trips without reimbursement for the fully allocated costs of providing that transportation effectively and unfairly shifts that burden from the Medicaid program to those state and local governments and abdicates the CMS role of providing non-emergency transportation services to Medicaid recipients.

This result is not mandated by the Deficit Reduction Act of 2005 and, in fact, flies in the face of other federal initiatives, specifically, the United We Ride Program, as described in Executive Order 13330 (EO 13330), Human Services Transportation Coordination, issued February 24, 2004. That Executive Order tasks the Secretary of Health and Human Services, among others, with promoting interagency cooperation in the provision of transportation services. In contrast, the result of this proposed rule is the abandonment of such cooperation.

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’s Impacts on State and Local Governments Should be Reevaluated

As recognized in the NPRM, section 202 of the Unfunded Mandates Reform Act requires CMS to assess the costs associated with any proposed rule that mandates spending in excess of $120,000,000. Given the burden associated with paratransit trips, we believe CMS should perform and make publicly available a detailed study of the number of trips likely to be shifted to local responsibility and the financial impact of those trips. We note that, in addition to the burdensome operating costs discussed above, any significant increase in the paratransit load borne by public transportation agencies would also occasion substantial capital costs to fund additional vehicles and maintenance facilities. Taken together, the operating and capital burden on state and local governments could easily surpass $120,000,000. A perfunctory statement in the NPRM that the proposed rule “would have no consequential effect” on the regulated state, local, and tribal governments is insufficient to meet CMS’ obligation under the Act.
Moreover, stressing the state and local governments with the additional burden of under-funded non-emergency medical transportation requirements threatens the ability to provide paratransit services to the ever growing population of seniors and persons with disabilities. In attempting to provide flexibility, the proposed rule would instead 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 implementing the Deficit Reduction Act of 2005 and stand ready to provide information, research, or other assistance necessary in fully exploring the consequences of implementation strategies. For additional information, please contact James LaRusch of my staff at (202) 496-4808 or jlarusch@apta.com.

Sincerely yours,

William W. Millar
President

WWM/cbo