

December 20, 2002

Mr. Richard Strauss, Director
Division of Financial Management, FSQG, CMSO
Centers of Medicare and Medicaid Services
7500 Security Boulevard
Mail Stop S3-13-15
Baltimore, MD 21244-1850

Dear Mr. Strauss:

The Council for Exceptional Children (CEC) is the largest professional organization committed to improving educational outcomes for individuals with exceptionalities. CEC accomplishes its worldwide mission on behalf of educators and others working with children with exceptionalities by advocating for appropriate government policies, setting professional standards, providing continuing professional development, and assisting professionals in obtaining conditions and resources necessary for effective professional practice. CEC appreciates the opportunity to provide the following comments on the Medicaid School Based Administrative Claiming Guide.

Reimbursement of Medicaid administrative claims is of particularly high interest to CEC as many children with disabilities receive Medicaid reimbursable services. After reviewing the Guide, we are very concerned that the guidelines have the potential to negatively affect the ability of school personnel to properly seek appropriate reimbursement for administrative costs associated with provision of Medicaid school based services. Specifically, we are strongly opposed to (1) the Guide's proposal to disallow reimbursement for IDEA child find activities and development an IEP; (2) elimination of enhanced federal financial participation for medical personnel; (3) requirement that schools enroll as a fee-for-service provider; (4) proposed restrictions on referrals made to Medicaid providers; and (5) the proposed restrictive cost rate methodology.

CHILD FIND AND DEVELOPMENT OF AN INDIVIDUALIZED EDUCATION PLAN (IEP)

The Guide proposes to disallow reimbursement for administrative activities related to child find under IDEA and the development of an Individualized Education Programs (IEP) for children and youth with disabilities (beginning on page 18). Under these guidelines, child find, initial evaluation and reevaluation are determined to be exclusively educational in nature, and as such no longer reimbursable. However, under IDEA, schools are required to identify children in need of special education and related services and to develop a plan for those services. The Guide discusses the potential for overlap

with the Early Periodic Screening, Diagnosis and Treatment (EPSDT) required under Medicaid State Plans and finds that this, in and of itself, is sufficient reason to prohibit schools from getting reimbursed for Child Find and IEP development. However the courts, and even Health and Human Service's Departmental Appeals Board rulings, while recognizing the close nature and overlap of the two functions (IDEA's child find requirements and EPSDT), have found and clarified that distinctions may be made between those services that are "educational" in nature and those services that are "medical assistance" in nature. The latter is eligible for reimbursement by Medicaid for other agencies, but no longer allowable for schools according to the Guide. Furthermore, there are extensive categories to ensure that local personnel are able to classify something as educationally related and medical assistance related. We are concerned that the Guide ignores these classifications and instead eliminates the reimbursement for schools to perform this vital function.

In addition to being a tool by which a child's special instructional needs are addressed, the IEP often also serves as part of a medical treatment plan of care for a child with extensive medical needs. Again, the Guide has determined that the time and preparation for the development of this plan is no longer an allowable expense under the Medicaid administrative claiming program. While we recognize it is a different policy issue than child find under IDEA and EPSDT, in these circumstances the development of the IEP represents medical service planning and therefore should be reimbursable under Medicaid. Furthermore, other public agencies are allowed to claim administrative reimbursement for medical treatment planning. Schools are not seeking reimbursement for duplicative services, and time study codes are in place to distinguish between planning for educational and health-related activities.

CEC opposes, in the strongest of terms, the Guide's proposed approach detailed above as it will adversely impact the IEP development process and the ability of schools to help identify and provide services to children and youth with disabilities.

ELIMINATION OF ENHANCED FEDERAL FINANCIAL PARTICIPATION FOR SKILLED PROFESSIONAL MEDICAL PERSONNEL

The Guide stipulates that Skilled Professional Medical Personnel (SPMP) must not perform administrative activities that could be performed by someone without these qualifications (Page 15). As such, SPMP personnel will not be reimbursed at the enhanced rate based on their qualifications. This is new policy that applies to schools only. Furthermore, this policy will take effect on January 1, 2003 pursuant to a policy letter sent to State Medicaid Directors on November 21, 2002. We believe this proposed policy unfairly targets schools, as many health professionals in other agencies are eligible for enhanced federal financial participation. Furthermore, at the local school level there are instances where a school health professional's skilled medical knowledge is needed to competently perform some administrative functions, particularly in regard to children with complex health issues. Additionally, to unilaterally change this policy and provide the arbitrary date of January 1, 2003 will have budgetary implications for schools as this change takes place after schools have completed the budget process for the current school

year. Any reductions under this proposal will likely reduce money available and cause budgetary problems for schools and potentially reduce services for children.

REQUIRE SCHOOLS TO ENROLL AS A FEE-FOR-SERVICE PROVIDER OR FACE ELIMINATION OF MEDICAID ADMINISTRATIVE CLAIMING

The Guide proposes to eliminate the currently allowable Medicaid Administrative Claiming (MAC) activities performed within the school setting unless the school is an enrolled as a Medicaid Fee-For-Service (FFS) provider (beginning on page 16). Furthermore, if a school operates as a FFS provider, the Guide would only allow schools to receive reimbursement if the child receives direct services from an approved Medicaid provider. Generally speaking, most of the states' school-based FFS programs are very limited with respect to the direct services that are eligible for Medicaid reimbursement, and (or) are extremely burdensome for schools and, as such, many schools have chosen not to participate in the FFS program. Whether a school chooses to participate in their state's FFS program should not restrict or limit their right to participate in the Medicaid administrative claiming program. Again, this requirement unfairly singles out schools, as it is not imposed on other public agencies that are currently reimbursed for administrative activities.

RESTRICTION OF REFERRALS TO MEDICAID PROVIDERS

Another major concern CEC has with the Guide is based on our understanding that the Guide proposes to allow reimbursements for referrals made to Medicaid providers only through the application of a provider participation rate to the referral portion of the MAC claim (page 16, 46 and throughout). There is no Medicaid requirement that restricts referrals for Medicaid covered services to providers that bill and are reimbursed by Medicaid. Again, this unfairly targets schools only as this would impose another layer of administration exclusively on schools.

INDIRECT COST RATE METHODOLOGY

The Guide states that only indirect cost rates approved by the agency responsible for approving such rates may be used. This differs from existing guidance and practice, which allows states to determine the appropriate method for including indirect costs in calculating the claim provided that it conformed to OMB A-87. The Department of Education calculates two indirect rates for schools; the unrestricted indirect cost rate which corresponds to that used by other public agencies and the more limited restricted indirect cost rate developed exclusively for educational programs subject to statutory restriction. It is unclear if the guidelines would allow the use of the unrestricted rate. Earlier drafts of the Guide specified that only the restricted rate could be used. The use of a restricted rate will significantly reduce the current reimbursement for schools, and is inconsistent with the indirect cost rate allowed for other public agencies.

In conclusion, CEC is very concerned that the guidelines have the potential to negatively affect the ability of school personnel to properly seek appropriate reimbursement for administrative costs associated with provision of Medicaid school based services, particularly for children and youth with disabilities. As CEC is the largest professional association focused on serving the needs of children and youth with disabilities in our

nation's schools, we ask that you give due consideration to our concerns and make necessary and appropriate revisions to the final Guide consistent with the comments above.

If you have any questions, please feel free to contact either Deborah Ziegler (703/264-9406) or David Egnor (703/264-9452).

Thank you for considering our views.

Sincerely,

Deborah A. Ziegler
Assistant Executive Director
Public Policy Unit

David E. Egnor
Senior Director
Public Policy Unit