



June 1, 2009

The Honorable Kathleen Sebelius  
Secretary of Health and Human Services  
Hubert H. Humphrey Building, Room 445-G  
200 Independence Avenue, SW  
Washington, D.C. 20201

Re: CMS-2287-P2 Rescission of School Based Services Final Rule, and CMS-2237-P, partial rescission of Case Management Services Interim Final Rule

Dear Secretary Sebelius:

LEAnet, a national network of local education agencies, respectfully submits this comment letter in response to the rescission of the rules pertaining to School Based Services and Case Management Services as published in the May 6, 2009, Federal Register (74 FR 21230 and 74 FR 21232).

LEAnet had filed objections during earlier rulemaking and recommended that the proposed and interim rules for school-based services and case management be withdrawn in their entirety. We argued then and continue to maintain that the final and interim final rules that are now subject to rescission are flawed both legally and as a matter of public policy.

LEAnet strongly supports CMS' decision with regard to CMS-2287-P2, which rescinds the School Based Services Final Rule; and CMS-2237-P, which partially rescinds the Case Management Interim Final Rule. As previously stated in our comment letter for the School Based Rule, we disagree with CMS's proposal to eliminate Medicaid administrative funding for all schools due to management problems at a few schools. Rather than attempting to throw the baby out with the bathwater, CMS should focus its efforts on working with states to ensure proper claiming because we know that schools provide critical administrative services to children in Medicaid. Therefore, we are fully supportive of this administration's decision to rescind this regulation.

c/o Los Angeles Unified School District . 29<sup>th</sup> Floor . 333 S. Beaudry Avenue . Los Angeles . CA . 90017



### **Rule 2287-P**

This rule, which would preclude payments to schools for outreach activities was bad public policy and contrary not only to legislative intent, but also to Medicaid's requirements for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) and CMS's own previous guidance.

**Legislative Intent:** Medicaid was legislatively designed to work alongside other programs that address the health, social, and educational needs of high-risk children. Collaboration with other public agencies is a consistent theme throughout the Medicaid statutes. In fact, the statute is filled with provisions that underscore Congressional intent that responsibility for the program be shared among agencies including state welfare agencies, health agencies and the schools. The statute expressly assumes schools will be involved in the enrollment process, going so far as to identify elementary or secondary schools as "qualified entities" for making both presumptive and permanent eligibility determinations.

**EPSDT Requirements:** The EPSDT provision of the Medicaid program requires that states perform outreach to ensure that Medicaid recipients ages 0-21 are aware of and have access to EPSDT services and that once enrolled in Medicaid they actually receive needed health care services. Many EPSDT services (e.g. screening and diagnostic exams as well as follow up therapy and treatment) are coordinated and received in the schools. To this end, the CMS State Medicaid Manual not only encourages state Medicaid agencies to coordinate EPSDT activities with "school health programs of state and local education agencies" but also states that, "Federal Financial Participation (FFP) is available to cover the costs of public agencies of providing direct support to the Medicaid agency in administering the EPSDT program."

**Previous CMS Guidance:** In 2003, CMS Published the Medicaid Administrative Claiming Guide for school districts. In the introduction to the Guide, CMS states "*The school setting provides a unique opportunity to enroll eligible children in the Medicaid*



*program and to assist children who are already enrolled in Medicaid to access the benefits available to them.” It goes on to state that, “In carrying out the mission of meeting the educational needs of their students, schools find themselves delivering many different services to students that help ensure that students come to school healthy and ready to learn...”*

In promulgating CMS 2287-P, the previous administration attempted to justify elimination of school-based administrative and transportation service reimbursements by labeling or categorizing such currently eligible medical assistance as “educational” activities, simply because either the services are delivered by an educational agency or because the services are allowable under another broad federal statutory authorization that is primarily, though not entirely, educational in its purposes. CMS’s predecessor agency was admonished and prohibited from basing its policies on such imprecise labels, terminology, and categorizations by the federal court in *Bowen v. Massachusetts* (487 U.S. 879), stating that “*it is the nature of the services, not what the services are called or who provides them*” that determines whether the services qualify for Medicaid reimbursement.

### **Case Management Services**

LEAnet is encouraged by your decision to partially rescind the Case Management Services Interim Final Rule. We applaud you for recognizing that §§440.169(c) and 441.18(a)(8)(viii) are overly restrictive in defining individuals transitioning to community settings and for providing states with the flexibility they need during this time to provide coverage for these individuals by allowing them to use a reasonable definition of this term. We support your decision to remove §§441.18(a)(5) and (a)(6) and 441.18(a)(8)(vi) as we agree with your assessment that these sections limit the states’ delivery system for case management services and further that these are administratively burdensome and may limit beneficiary access to services. Case management is a vital service for Medicaid consumers and your decision to partially rescind this regulation is certainly a step in the right direction, but we believe



additional restrictions remain in this regulation that will restrict the ability for Medicaid funds to be used to ensure that the most vulnerable people receive timely and appropriate access to care.

Thank you for your time and attention to our comments. Should you have any questions please contact me at 989-400-2271.

Sincerely,

*Greg Morris*

Gregory K. Morris  
Executive Director  
LEAnet  
greg.leanet@gmail.com