



January 28, 2020

Seema Verma, MPH
Administrator
Centers for Medicare & Medicaid Services
7500 Security Blvd
Baltimore, MD 21244

RE: File Code – CMS-2392-P

Dear Administrator Verma:

On behalf of the American Speech-Language-Hearing Association, I write to offer comments on the Medicaid Program; Medicaid Fiscal Accountability Regulation.

The American Speech-Language-Hearing Association (ASHA) is the national professional, scientific, and credentialing association for 204,000 members and affiliates who are audiologists; speech-language pathologists; speech, language, and hearing scientists; audiology and speech-language pathology support personnel; and students.

ASHA appreciates the Centers for Medicare & Medicaid Services' (CMS) commitment to clarifying requirements and improving fiscal accountability under Medicaid. ASHA also recognizes the importance of CMS's oversight and enforcement of existing statutes and regulations related to Medicaid financing and service delivery. Any new rules must clarify these requirements rather than complicate them or create new barriers to effective processes that are currently in place.

ASHA's comments address three specific areas as they relate to audiologists' and speech-language pathologists' (SLP's) ability to care for Medicaid beneficiaries:

- health care-related taxes;
- payments funded by certified public expenditures made to providers that are units of government; and
- supplemental payments.

Permissible Health Care-Related Taxes (§433.55)

ASHA supports CMS's efforts to ensure that states and health care providers comply with requirements to ensure that states fund their share of Medicaid expenditures in accordance with the law. ASHA supports § 433.68(e)(3) of the proposal to ensure that states do not tax Medicaid services at a higher rate than non-Medicaid services. This provision helps protect providers from facing higher taxes when providing care to Medicaid beneficiaries as opposed to other patients. The fact that Medicaid reimbursement typically falls below the rates of Medicare and private health plans elevates the importance of this provision.

Ensuring that Medicaid providers, especially smaller providers and those in rural and medically underserved areas do not face higher taxes on the same services will help ensure that they can continue to participate in the Medicaid program.

Payments Funded by Certified Public Expenditures Made to Providers That Are Units of Government (§447.206(c)(1))

This proposal would specify new criteria for states when using a certified public expenditure (CPE) to fund their state share Medicaid payment. Under paragraph (c)(1), the rule would require the state to implement processes by which all claims for medical assistance would be processed through the Medicaid Management Information System (MMIS) in a manner that identifies the specific Medicaid services provided to specific enrollees.

For several years, CMS approved state Medicaid plans in which costs incurred by school districts for providing direct services to Medicaid eligible children are based on a CMS-approved cost allocation, reporting, and reconciliation methodology. This approach has improved claiming efficiency and enhanced the accuracy, comprehensiveness, and auditability of Medicaid reimbursements received by school districts for direct services. CMS also embraced this approach as a viable means of school districts obtaining Medicaid funds for reimbursable costs as the result of updated CMS guidance regarding the application of “Free Care” policies.¹

The application of proposed Sec. 447.206(c) would reverse many of the improvements that CMS and states have implemented to ensure that schools only receive reimbursement for Medicaid allowable costs for services provided in the schools. In the past, Fee for Service (FFS) billing by school districts experienced many unfavorable audits, exposed local education agencies (LEAs) to financial risks, and—in many instances—had a chilling effect on LEAs pursuing Medicaid reimbursement for qualifying services. Some of the resistance to seek Medicaid reimbursement also results from conflicting and duplicative documentation requirements under IDEA and Medicaid that this proposal would increase. For non-school based Medicaid providers, the MMIS and the enhancements proposed by CMS in the rule will enhance the effectiveness and transparency of capturing eligibility and utilization data to satisfy Medicaid program requirements.

However, for school-based Medicaid providers, the MMIS is an inadequate and duplicative means of monitoring program requirements, which—other than Medicaid eligibility—are better documented by IDEA compliance reporting. Mandating that, “all claims for medical assistance would be processed through the MMIS in a manner that identifies the specific Medicaid services provided to specific enrollees,” would be inconsistent with many current state Medicaid plans approved by CMS and roll-back the improvements that have enhanced accuracy and transparency of school-based billing over the past several years.

For these reasons, ASHA recommends that CMS exempt specified school-based services from the proposed MMIS requirements. Doing so would maintain the agreements for school-based services, which have improved efficiency and transparency, while moving to the MMIS for services not explicitly covered by a CMS approved cost allocation for specified school-based services. ASHA supports CMS’s efforts to ensure transparency and compliance with established policies for certified public expenditures. However, ASHA urges caution to ensure that compliance monitoring approaches do not over burden providers or reduce the ability of states to obtain federal matching funds when they provide appropriate state funds.

Congress recently recognized the importance of streamlining and simplifying processes and procedures for the provision of health care services to Medicaid eligible children in schools. Report language accompanying Division A of Public Law 116-94 directs the Department of Education’s Office of Special Education and Rehabilitative Services to coordinate with the CMS

to develop training and provide technical assistance with billing and payment administration for Medicaid services in schools.² ASHA appreciates that CMS launched the Patients over Paperwork initiative in 2017 to eliminate burdensome and unnecessary regulations that impede patient care. It's unfortunate that the proposal at 447.206(c)(1) runs counter to this effort. Instead, ASHA recommends that CMS clarify existing guidance and/or propose new guidance that reduces the paperwork burden and administrative barriers that impede the ability of LEAs to receive reimbursement for allowable Medicaid activities.

Supplemental Payments (§447.288) and Medicaid Practitioner Supplemental Payments (§447.406)

ASHA supports §447.288(c)(1) that would require states to report enough information to identify which providers receive supplemental payments and submit evaluations of whether payments met objectives. CMS has not provided evaluation metrics for these reports. Without these metrics and additional data, it is difficult to determine the true need for supplemental payment plans under FFS Medicaid and to accurately determine their impact quantitatively. ASHA suggests collecting and analyzing more data to better guide next steps in this area.

In addition, the proposed rule limits supplemental payments to physicians and other practitioners. The proposed new limits in §447.406 would allow states to make supplemental payments to practitioners up to 50% of the FFS base payments authorized under the state plan and 75% in designated geographic health professional shortage areas or Medicare-defined rural areas. While ASHA supports CMS's recognition of the need to ensure appropriate reimbursement in rural and medically underserved areas, unless states and CMS increase Medicaid base rate significantly, the limits within the proposal would result in sharp reductions in supplemental payments for providers and may reduce access to care for Medicaid beneficiaries. This reality exists because base Medicaid rates continue to decrease, particularly as a percentage of private health plans and Medicare reimbursement to physicians, hospitals, and other providers. Beyond applicability to supplemental payments, Medicaid rates must systematically be addressed by CMS to ensure the integrity and continuity of the program. Unsustainable reimbursement rates jeopardize access to health care for the 70 million Medicaid enrollees across the country. Recent reductions to Medicare payments, which have historically helped offset Medicaid reimbursement rates that do not adequately reimburse providers for the true cost of care, exacerbate the problem faced by Medicaid providers and Medicaid beneficiaries.

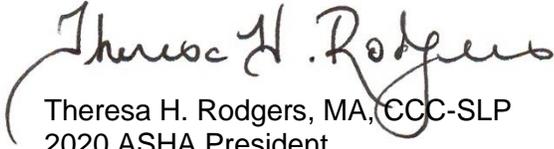
ASHA understands and supports CMS's efforts to clarify and improve the accountability and transparency of Medicaid financing. ASHA recommends that CMS act to ensure greater oversight and enforcement of existing statute and regulations as a first step toward addressing the compliance concerns that gave rise to this proposed rule. While program integrity requires that CMS act to ensure states comply with all requirements for funding their state share of Medicaid expenditures, CMS must not further restrict the ability of states to use bona-fide public funds for meeting their state share obligations. Also, CMS should not restrict state flexibility to use Medicaid funds to most efficiently and effectively incentivize providers to ensure beneficiary access to services.

Thank you for the opportunity to provide comments on the Medicaid Program; Medicaid Fiscal Accountability Regulation proposed rule. If you or your staff have any questions, please contact

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Laurie Alban Havens, ASHA's director of health care policy, Medicaid and private health plans, at lalbanhavens@asha.org or 301-296-5677.

Sincerely,



Theresa H. Rodgers, MA, CCC-SLP
2020 ASHA President

¹ Department of Health & Human Services. (2014). *Medicaid Payment for Services Provided without Charge (Free Care)*. Retrieved from <https://www.medicaid.gov/federal-policy-guidance/downloads/smd-medicaid-payment-for-services-provided-without-charge-free-care.pdf>.

² Division A-Departments of Labor, Health and Human Services, and Education, and Related Agencies. (2020). *Appropriations Act*. p. 136. Retrieved from <https://docs.house.gov/billsthisweek/20191216/BILLS-116HR1865SA-JES-DIVISION-A.pdf>,