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# HealthLawAdvocates

*Fighting for Health Care Justice*

March 24, 2008

VIA ELECTRONIC AND REGULAR MAIL  
[www.cams.hhs.gov/regulations/eRulemaking](http://www.cams.hhs.gov/regulations/eRulemaking)

Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
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Re: 42 CFR Part 440, CMS-2232-P: Provisions of the Proposed Rule

Dear Sir or Madam:

Please accept these written comments on behalf of Health Law Advocates in connection with proposed rule 42 CFR Part 440, CMS-2232-P, the Medicaid Program: State Flexibility for Medicaid Benefit Packages.

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Health Law Advocates (HLA) is a non-profit public interest law firm. HLA is affiliated with the statewide consumer advocacy group, Health Care For All, the Massachusetts leading consumer health advocacy organization. HLA provides free legal assistance to low-income Massachusetts residents who are facing obstacles to adequate health care access or medical debt issues as a result of lack of or inadequate health care benefits. HLA represents and advises hundreds of clients each year. Our eligibility criteria allow us to serve members of households with incomes up to 300% of the federal poverty level. Over the past few years, we have had a significant increase in clients facing substantial medical debt and barriers to health care. Often these clients face thousands of dollars in uncovered medical bills, which cripples their financial wellbeing. In numerous instances, we have assisted clients whose leading cause of medical debt is related solely to uncovered ambulance services that are non-emergency ambulance transports.

I. HLA Opposes the Elimination of Non-Emergency Medical Transportation from Medicaid State Plans.

Medicaid state plans currently include transportation to and from medical providers, including all medically necessary non-emergency ambulance transportation. 42 CFR 431.53; The Deficit Reduction Act, Section 1902(a)(4) and 1902(a)(19).

Proposed rule CMS-2232-P seeks to implement provisions of Section 6044 of the Deficit Reduction Act of 2005, Pub. L. 109-171, which amends the Social Security Act by adding Section 1937. Section 1937 would allow states increased flexibility under an approved Medicaid state plan to define the scope of covered medical assistance to needy individuals whose income and resources are insufficient to meet the costs of necessary medical services.

This would permit states to amend their Medicaid state plan to offer benchmark or benchmark-equivalent benefit packages to certain Medicaid recipients, as opposed to the standard benefit package. As a result, HLA opposes the proposed rule because it would give states the option to eliminate non-emergency medical transportation as a Medicaid benefit.

## II. Non-Emergency Ambulance Transportation Is a Consumer Lifeline

Massachusetts provides complete coverage for non-emergency medical transportation under its Medicaid state plan. Even under the Massachusetts' state plan, certain consumers experience barriers to health care access. For the reasons cited below, HLA urges Centers for Medicare & Medicaid Services (CMS) to maintain coverage for all medically necessary ambulance services, including non-emergency transportation:

- Under the proposed rule, underserved populations will have to pay for their own transportation to and from medical providers.
- Consumers with disabilities and chronic illnesses will be unable to access medically necessary health care. These consumers are medically unable to take a taxi or public transportation or to access health care through any alternative means.
- Medically necessary ambulance transport is a lifeline for consumers nationwide and often the only means of access for disabled people to receive dialysis, chemotherapy, radiation, and other medical services that cannot be delivered to their homes.

Inclusion of all medically necessary ambulance transportation in Medicaid state plans plays a vital role in allowing consumers access to preventive treatment in medically necessary situations.

## III. Consumers Nationwide Will Experience Increased Medical Debt

Medical bills to consumers for non-emergency ambulance transportation surmount even in a state, such as Massachusetts, whose state plan covers these benefits. Consumers impacted typically experience acute medical conditions or are involved in accidents where a third party called for an

ambulance. Later these consumers receive bills from ambulance companies for several hundred or thousands of dollars. When consumers are unable to pay the bills, hospitals and other health providers often hire collection agencies and employ aggressive collection efforts against them.

Non-emergency but medically necessary ambulance services are typified by HLA clients who are uninsured or underinsured. For example, HLA assisted a mother who experienced sudden pre-term labor and was driven by her husband to an emergency room. The local hospital then placed her in an ambulance that transported her to a Boston teaching hospital for more specialized medical treatment. The family thereafter received a medical bill due to insurance denial for a non-emergency medical transport.

Consumers nationwide experience medical debt when medically necessary ambulance transports occur and insurance carriers deny coverage. There is an arbitrary line between a 911 emergency and a medically necessary ambulance transport. It is fundamentally unfair to impose financial hardship on consumers in need of non-emergency ambulance transport.

#### IV. Conclusion

Health Law Advocates respectfully requests that the Centers for Medicare & Medicaid Services require all Medicaid state plans to include coverage for non-emergency ambulance transportation. Proposed rule CMS-2232-P, to the extent that it eliminates non-emergency medical transportation, will create barriers in accessing health care and increase consumer medical debt.

Thank you for your review and consideration of Health Law Advocates' comments. I am available to supplement this material at any time, as needed. Do not hesitate to contact me directly at 617-338-5241 ext. 2987.

Very truly yours,

Lorianne M Sainsbury-Wong  
Senior Staff Attorney

cc: Barbara Anthony, Executive Director, Health Law Advocates  
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