

**DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR**

ACTION REFERRAL

TO <i>Myers</i>	DATE <i>5/27/08</i>
--------------------	------------------------

DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER 000614	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR <i>cc: Wells, Mrs. For Kennedy Dwight Siskler</i>	<input type="checkbox"/> Prepare reply for appropriate signature DATE DUE _____
	<input type="checkbox"/> FOIA DATE DUE _____
	<input checked="" type="checkbox"/> Necessary Action

APPROVALS (Only when prepared for director's signature)	APPROVE	* DISAPPROVE (Note reason for disapproval and return to preparer.)	COMMENT
1.			
2.			
3.			
4.			

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1.			
2.			
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4.			

Log:
C: Felicity
William
SMM

MAXIMUS
HELPING GOVERNMENT SERVE THE PEOPLE®

RECEIVED

April 28, 2008

MAY 27 2008

Mr. Robert Kerr, Director
South Carolina Department of Health and Human Services
PO Box 8206
Columbia, SC 29202

Department of Health & Human Services
OFFICE OF THE DIRECTOR

Re: South Carolina Medicaid School District Administrative Claiming

Dear Mr. Kerr:

We write to inform you of our recommendation that the South Carolina Department of Health and Human Services (DHHS) consider modifying the Random Moment Sample ("RMS") methodology that it uses for the South Carolina School District Administrative Claiming (SDAC) program. We describe below the basis for our recommendation.

I. Background

In May 2003, the Centers for Medicare & Medicaid Services ("CMS") published the Medicaid School Based Administrative Claiming Guide ("CMS Guide"). In the Guide, CMS addressed the manner with which "schools, state agencies and other interested parties" should treat "non-responses" (i.e., instances where an observation form is not returned) in connection with sampling and time studies. Specifically, CMS stated that:

To ensure an adequate number of responses, many schools over sample and/or factor in a non-response rate in their time study methodology. Under this methodology, over sampled responses are sometimes substituted for responses not received. However, over sampled responses should not be substituted for completed responses in which there are no or few reported Medicaid activities in order to increase the Medicaid reimbursable portion of the claim. No completed responses should be deleted or ignored. Another potential problem is employees who are instructed to not complete the time study if they typically do not perform many Medicaid activities. To avoid this, all non-responses should be coded to non-Medicaid time study codes. In addition, codes should be established to fully account for vacations, sick time, lunch hours, and other paid time not at work.

CMS Guide, at pg. 41 (emphasis added).

We are in possession of a copy of a letter from Renard L. Murray, D.M. of the CMS Division of Medicaid and Children's Health sent to DHHS dated September 13, 2006, stating "CMS requires that all non-responses be coded to non-Medicaid time study codes."

Through the claiming quarters beginning in 2001 and ending on June 30, 2007, MAXIMUS prepared claims for school districts in South Carolina that treated "non-responses" differently than the CMS Guide requires. For claiming quarters ending in September 2007 and December

2007, MAXIMUS prepared claims in accordance with the CMS guidance. Ms. Vida Love of your agency was informed of this revised calculation methodology upon submission on February 29, 2008 of claims for the October-December 2007 claiming period. A copy of this correspondence is enclosed.

We understand that the requirement described in the CMS Guide regarding the treatment of non-responses did not appear in the draft CMS Guide that CMS issued in February 2000. As a result, because this requirement was a new requirement, states and other interested stakeholders were not given the opportunity to review and comment on the proposed modification during the formal discussion period conducted by CMS prior to issuance of the CMS Guide.

II. Other Federal Guidance

We understand the methodology used during the time in which MAXIMUS calculated claims for school districts in South Carolina is consistent with other federal guidance regarding sampling and the treatment of non-responses and that, conversely, the CMS Guide arguably is contrary to such federal guidance. For example, the United States Office of Management and Budget (“OMB”) in a Statistical Policy Working Paper does not stipulate that non responses have to be coded to a non federal program, but rather states that “there are several options including doing nothing and working harder to decrease the number of nonrespondents.” OMB Statistical Policy Working Paper 31 (Measures and Reporting Sources of Error in Surveys) (July 2001), Chapter 4.4 (Compensating for Nonresponse), at 4-12. The OMB states that the level of non response is often an indicator of the quality of a sample and that when non response rates drop below 80%, then one must analyze the extent of non response bias. See e.g., Standards and Guidelines for Statistical Surveys (2006), at 3.2.9 and Statistical Policy Working Paper 31, Chapter 4.4.1 (weighting procedures), at 4-13.

The CMS Guide is also arguably contrary to direction provided by the United States Department of Health and Human Service (DHHS) in its Guide for State and Local Government Public Assistance Agencies/ Departments Procedures for the Preparation and Submission of Cost Allocation Plans. This document is often referred to as the “OPAL Guide,” since it was issued by the Office of Procurement, Assistance and Logistics within DHHS. Within the OPAL Guide, DHHS provides directions on how an RMS should be operated and on page 90 of the guide in an example on how RMS results should be processed, DHHS provides the following instruction: “by excluding ‘non-strikes’ and ‘other’ from the distribution base the associated costs are distributed to the programs and the ‘common’ category is then allocated to programs based on unduplicated case count.” In other words, in the OPAL Guide, DHHS advises state and local governments to exclude non responses – not code them to non federal programs.

In addition, CMS has, in some instances, allowed school districts to use a methodology different than the one in the CMS Guide that would allow the schools to discard non responses provided that at least 85% of the moments in the sample were returned and are valid. For example, in January 2007, CMS approved Alaska’s School Based MAC Plan, which provides that:

MAC Moments not returned or not accurately completed and subsequently resubmitted by the school district will not be included in the database unless the return rate for valid moments is less than 85%. If the return rate of valid moments is less than 85%, then all non-returned moments will be included in the data base and calculations and will be coded as non allowable codes. To ensure that enough moments are received to have a statistically valid sample Alaska will over sample. See Alaska School Based Medicaid Administrative Claiming Plan.

MAXIMUS would be happy to help DHHS develop a methodology similar to the one CMS approved for Alaska. However, absent specific approval by CMS to use a different methodology, we believe we must follow the process for handling non-responses described in the CMS Guide.

III. Recommended Actions:

Based on the foregoing, we recommend that absent specific approval by CMS to use a different methodology than the methodology described in the CMS Guide, DHHS follow the requirements described in the CMS Guide and seek Guidance from CMS on how claims already filed should be adjusted. With respect to claims already submitted, we recommend that DHHS ask CMS to review that methodology and that the DHHS modify the claims as appropriate in accordance with the specific CMS guidance that it receives. If DHHS chooses not to submit the methodology to CMS for its review, we recommend that DHHS review claims already submitted to ensure that such claims were submitted consistent with applicable federal health care program requirements.

IV. MAXIMUS Corporate Integrity Agreement

As you may be aware, MAXIMUS entered into a Corporate Integrity Agreement (“CIA”) with the OIG in July 2007. It is our interpretation of our obligations under the CIA that we can no longer prepare claims on behalf of School Districts in Florida using the existing methodology inasmuch as it is inconsistent with the CMS Guide (a “written directive,” which constitutes a “federal health care program requirement” under the CIA).

Please advise us on what you would like us to do with claims already prepared and filed with CMS. Also, please be advised that MAXIMUS may notify our CIA monitor from the U.S. Department of Health and Human Services Office of the Inspector General concerning this matter.

MAXIMUS values its relationship with South Carolina and the school districts in the State. We hope that we can continue to move forward together for the benefit of the citizens of South Carolina.

* * *

Please contact me with any questions or concerns. I can be reached at 804-357-7739 or by e-mail at tommcgraw@maximus.com.

Sincerely,



Tom McGraw
President, Financial Services Division

Enclosure

Cc: Virgie Chambers, South Carolina Department of Education

MAXIMUS

