

assistance under Medicaid.

Although transportation is never mentioned in the law (it is defined in regulations), the necessity for transportation services is implied in the language that states that medical assistance be furnished with reasonable promptness. Medicaid recipients are provided with the freedom to select the type of provider they use for Medicaid-related purposes.

The opportunity for coordination under the law is limited to the state plan provisions noted above. Many other provisions could create barriers to coordination. For example, for one category of recipient, fees or charges for certain identified services are prohibited; for another category of recipient, a nominal fee may be charged. This raises the issue of conflicting public subsidies.

Another point should be made concerning barriers to coordination in Medicaid. This is essentially a state-administered program, with the federal role limited to funding the states and certain oversight actions to prevent fraud. The states are bound by law to provide only those types of services identified to the different categories of recipients; they interpret the listing of required five or seven services as broadly or as narrowly as they wish. Thus, the coordination decision may rest with the state and may differ from state to state.

CONCLUSION

Although most of the statutes included in this study encourage or mandate various forms of coordination, they all include provisions that could also prove to be barriers to coordination. These conflicts may be clarified when program regulations are reviewed and analyzed. On the other hand, some regulations only serve to cloud the issue or confuse it further. Ultimately, the interviews at the federal, state, and local levels about the statutory and regulatory barriers and the encouragement of coordination will determine whether, in fact, the provisions and requirements identified in our analysis act as barriers to or encouragement of coordinated transportation, or whether state or local rulings have as much, or more, of an impact on coordination than federal-level actions.

Summary List of Barriers

From this initial investigation, the barriers to coordi-

nation that appear most often are

1. Inconsistent federal-local matching ratios;
2. Differing definitions of a handicapped individual;
3. Differing planning cycles among the programs included in this study; and
4. State and local interpretations of federal audit provisions.

In addition, certain barriers may appear in only one statute but could affect the coordination attempts of several programs. For example, such barriers include

1. Title XX eligibility and reporting requirements;
2. UMTA 13c provisions and charter-bus restrictions outside urbanized areas; and
3. Older Americans Act exemption from coordination activities under the Joint Funding and Simplification Act.

In reviewing program regulations, we will pay special attention to how regulations interpret some of the common definitions (e.g., handicapped and coordination) found in more than one statute. We will also look for interpretations of the planning, audit, accounting, and reporting provisions found in all statutes. The coordination requirements and activities resulting from the research and demonstration provisions in most of the statutes will also be examined with a view toward program policy implications emanating from such research activity. Finally, program regulations governing the joint funding provision will be reviewed to determine its different interpretation among the several acts and its impact on coordinated transportation.

What we find in our analysis of these seven statutes is that the barriers to coordination are not obvious. For example, nowhere in any of the laws included in this study is there a prohibition, either implicit or explicit, of two or more programs sharing vehicles or other resources across program lines or mixing client groups from several different programs on one vehicle. And yet, that is what many local agencies believe, because the program regulations make explicit the prohibition of sharing facilities or their state agencies interpret related regulatory provisions as prohibiting a particular activity (or establish their own guidelines in that regard). Interviews at the federal and state levels should reveal where and how barriers and faulty interpretations of regulations originate.

Abridgment

Section 13c: Some Concerns and Considerations

Lynn A. Franks, U.S. Department of Labor

Section 13c of the Urban Mass Transportation Act of 1964, as amended, provides for the protection of employees when a mass transit system is acquired or improved by a state or local government with the use of federal funds.

The protective arrangements must include, but are not limited to, provisions that provide for

1. Preservation of rights, privileges, and benefits (including continuation of pension rights and benefits)

under existing collective bargaining agreements or otherwise;

2. Continuation of collective bargaining rights;
3. Protection of individual employees against a worsening of their employment positions;
4. Assurances of employment to employees of acquired mass transportation systems and priority reemployment of employees terminated or laid off; and
5. Paid training or retraining programs (1).

The U.S. Department of Labor (DOL) refers copies of the application for federal assistance to any labor organization that represents urban mass transportation employees in the affected project service area and solicits their views on appropriate terms and conditions for employee protection. The parties involved are then encouraged to reach agreement on employee protection terms and conditions. DOL furnishes technical and mediator assistance, if needed. DOL then reviews the agreement to ensure that it provides protections that meet the requirements of the law. By letter to the Urban Mass Transportation Administration (UMTA), DOL makes the required certification. In the event that no agreement is reached, the Secretary of Labor sets the terms and conditions considered acceptable for certification. If the employees are not represented for purposes of collective bargaining, DOL, in its letter of certification, sets the terms and conditions for employee protection (1).

Section 13c is more complex than it appears to be on the surface. The nature of section 13c is best learned by the grant applicant through the experience of working through the requirements of an UMTA application. The two primary areas of concern in this paper are paratransit and rural transportation.

PARATRANSIT

Nowhere does the act or its legislative history define the term employee. Such a determination is within the jurisdiction of the Secretary of Labor. Since UMTA funds in certain paratransit projects were used to reimburse taxi services, DOL was forced to develop a policy about the applicability of section 13c protections to taxi operations. Such a policy was developed by the case-by-case method of determining whether or not employee coverage was warranted in each individual case.

Where taxi drivers provide service under UMTA funding, DOL has conducted an inquiry into the extent of the individual driver's participation in project services. The Akron, Ohio, application, for example, indicated that the taxi drivers who were providing project services were only tangentially involved in such activity. They spent the great majority of their time in performance of traditional, exclusive-ride service. Accordingly, they were denied section 13c coverage.

The proposed agent-broker project in Pittsburgh,

Pennsylvania, presented DOL with a different situation. Several taxi companies, having diverse operations, were considered likely providers of project services. One of the companies bidding on the project had some drivers who were involved exclusively in the provision of project paratransit services. In addition, this taxi firm derived a minimum of 15 percent of its revenue from project services. In view of the degree of involvement in project services, DOL concluded that certain employees of the company and others similarly situated could not be excluded from section 13c coverage. Specific section 13c negotiations between the grant recipient and the taxi company were not required in the Pittsburgh situation due to the urgent need for project certification; however, DOL applied substantially the same levels of protection to taxi employees as were afforded to employees of the Port Authority of Allegheny County, who are represented by the Amalgamated Transit Union.

RURAL TRANSPORTATION

The specific provisions, if any, relevant to section 13c that will be made applicable to the legislative provisions on rural transportation are unknown. DOL thinks that section 13c protections should apply to any rural transportation funding program that may be enacted into law.

Heretofore, DOL has dealt largely with urban transportation problems. Rural transportation, not unlike UMTA taxi project situations, will present innovative and complex employee protection issues. Experience shows that the parties themselves often provide the best solutions to problems applicable to a local area.

In all probability, because of the absence of organized transportation in most rural areas, the vast majority of rural transportation grants will be certified by DOL on a nonunion basis; that is, the Secretary of Labor will issue the section 13c terms and conditions to be put in the grant contract.

If intercity bus carriers receive funding under the impending legislation and provide mass transportation service to small towns, rural transportation providers and the intercity bus lines may be in competition with one another, creating the potential for adverse effects. Many rural transportation applicants will come into contact with unions for the first time. Under current procedures, a provider of mass transportation in the service area of the project is afforded an opportunity to negotiate specific section 13c protections with the recipient of federal funds. If this occurs, DOL's technical assistance and mediation services will be in great demand.

REFERENCE

1. Consumer Information Leaflet. U.S. Department of Labor, USDL-32 (LMSA-5), April 1978.