

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
Statutory Authority: 16 Delaware Code, Section 512 (16 Del.C. §512)

FINAL

ORDER

Payment Error Rate Measurement (PERM)

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (“Department”) / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Title XIX Medicaid State Plan regarding *Payment Error Rate Measurement (PERM)*. The Department’s proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the October 2011 Delaware *Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by October 31, 2011 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The proposal serves as notice of intent of the Division of Medicaid and Medical Assistance (DMMA) to submit a State Plan Amendment (SPA) to elect the option to substitute the Payment Error Rate Measurement (PERM) eligibility process for the traditional Medicaid Eligibility Quality Control reviews.

Statutory Authority

- Improper Payments Information Act of 2002 (IPIA), amended in July 2010 by the Improper Payments Elimination and Recovery Act of 2010 (IPERA), Public Law 111-204;
- Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111-3;
- 42 CFR §431.806(b), *State plan requirements; Use of PERM data*

Background

To implement the requirements of the Improper Payments Information Act of 2002 (IPIA), amended in July 2010 by the Improper Payments Elimination and Recovery Act of 2010 (IPERA), Public Law 111-204, the Centers for Medicare and Medicaid Services (CMS) developed the Payment Error Rate Measurement (PERM) program. Under PERM, reviews are conducted in three areas for both the Medicaid and CHIP programs: 1) Fee-for-Service, 2) Managed Care and 3) Program Eligibility. Under the eligibility component, States draw monthly samples of cases and verify eligibility for each case based on State and Federal policies. These reviews result in an eligibility error rate that is included in the national payment error rates for Medicaid and CHIP.

The Medicaid Eligibility Quality Control (MEQC) program is set forth in Section 1903(u) of the Social Security Act. This is an annual eligibility measurement that is similar to the PERM eligibility review, but has its own requirements under a separate regulation. PERM and MEQC have been a longstanding issue between CMS and the States, essentially because every three years the States must administer two parallel eligibility reviews while participating in PERM. The States have requested for many years that CMS implement ways to reduce the duplication of effort between the two programs. Attempts to coordinate PERM and MEQC in previous years through a “substitution” strategy were unsuccessful. The programs are authorized under two different statutes and two separate regulations and could not be supplanted. With the enactment of the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA), CMS was able to again attempt to implement a substitution strategy for PERM and MEQC. CHIPRA at Section 603(e) requires that CMS review PERM and MEQC policies and coordinate the requirements of both programs in an effort to harmonize the programs.

On August 11, 2010, CMS issued a final rule outlining its planned implementation of provisions from CHIPRA with regard to harmonizing the MEQC and PERM programs. The final rule is available at <http://www.gpo.gov/fdsys/pkg/FR-2010-08-11/pdf/2010-18582.pdf>. The rule allows the States the option to use data resulting from the MEQC reviews to complete the requirements for the PERM eligibility reviews. States also have the option to use data resulting from the PERM eligibility reviews to complete the requirements for the MEQC reviews.

Because States administer Medicaid and CHIP according to each State’s unique program, the States necessarily need to be participants in the measurement process. CMS use PERM to measure Medicaid and CHIP improper payments in a subset of States each year. States are reviewed on a rotating basis, so States are measured in a 17-State, three year

rotation. States selected for Medicaid and CHIP improper payments measurements in Federal Fiscal Year 2012 include Delaware. States sample and conduct eligibility reviews of Medicaid and CHIP cases. CMS' Statistical Contractor calculates and combines the State eligibility error rates to develop national eligibility error rates for Medicaid and CHIP.

States that elect the option to substitute PERM data for MEQC data in a State's PERM cycle need to submit a State plan amendment referencing the PERM rule.

Summary of Proposal

The Medicaid state plan will be amended at General Program Administration, 4.4 Medicaid Quality Control to identify the State's election to substitute PERM reviews (active and negative) for the State's MEQC traditional reviews during the State's PERM cycle year. The regulation at 42 CFR §431.806(b) authorizes this substitution.

Fiscal Impact Statement

These revisions impose no increase in cost on the General Fund.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

As background, under a Medicaid Eligibility Quality Control ("MEQC") program, states generally review samples of Medicaid cases to assess excess payment error rates. CMS is authorized to withhold payments to states based on the amount of improper payments which exceed a 3% threshold. See attached 75 Fed Reg. 48816 (August 11, 2010). A second, overlapping payment error system is also operating pursuant to another federal law. The second system is the "Payment Error Rate Measurement (PERM) Program. States have been critical of the overlapping systems based on perceived duplication of effort. See discussion at 15 DE Reg. 449.

In 2010, CMS issued a 36-page regulation [75 Fed Reg. 48816 (August 11, 2010)] offering states some relief, i.e., states may opt to substitute PERM reviews for the MEQC reviews every 3 years (conforming to the 3-year review cycle). Delaware DMMA is now proposing a Medicaid State Plan Amendment electing this option consistent with the federal regulatory amendments reflected in the attached 75 Fed Reg. 48847.

The GACEC and the SCPD endorse the concept underlying the DMMA regulation since it should reduce administrative costs. Councils' only concern is that the proposed revision to the State Plan is somewhat vague and does not explicitly mention acceptance of the option to substitute PERM reviews for the MEQC reviews during Delaware's PERM review cycle. Perhaps CMS has provided states with a somewhat vague template and DMMA is simply adopting that template. We respectfully requests clarification on this issue.

Agency Response: CMS provided the draft State plan amendment (SPA) preprint to authorize this substitution. State Medicaid agencies are instructed to submit this template to CMS for review and approval. Thank you for the endorsement.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the October 2011 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to regarding *Payment Error Rate Measurement (PERM)* is adopted and shall be final effective January 10, 2012.

Date of Signature

Rita M. Landgraf, Secretary, DHSS

DMMA FINAL ORDER REGULATION #11-55

REVISION:

35

Revision:

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: DELAWARE

Citation

42 CFR 431 Subpart P
50 FR 21839

4.4

Medicaid Eligibility Quality Control (MEQC)

75 FR 48847
1903(u) of
of the Act,
P.L. 99-509
(Section 9407)
P.L. 107-300
P.L. 111-3

(a) A system of quality control is implemented in accordance with 42 CFR Part 431, Subpart P.

(b) In accordance with 431.806(c), the State operates a Medicaid quality control claims processing assessment system that meets the requirements of 431.800(e), (g), (h), and (k) 431.830 – 431.836

Yes.

Not applicable. The State has an approved Medicaid Management Information System (MMIS).

(c) In accordance with 431.806(b), Payment Error Rate Measurement (PERM) is implemented in accordance with 42 CFR Part 431, Subpart Q, in substitution to meet the statutory and regulatory (“traditional”) Medicaid Eligibility Quality Control (MEQC) review during the State’s PERM cycle.

Yes.

Not applicable. The State operates an approved MEQC Pilot.