

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

PROPOSED

PUBLIC NOTICE

Payment Error Rate Measurement (PERM)

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) provides notice of intent 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.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or by fax to 302-255-4425 by October 31, 2011.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

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.

**DMMA PROPOSED REGULATION #11-39
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
75 FR 48847
1903(u) of
of the Act,
P.L. 99-509
(Section 9407)
P.L. 107-300
P.L. 111-3

4.4

Medicaid Eligibility Quality Control (MEQC)

(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.

15 DE Reg. 448 (10/01/11) (Prop.)



Not applicable. The State operates an approved MEQC Pilot.