

# **Payment Error Rate Measurement Manual**

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## **I. Payment Error Rate Measurement Program Introduction**

### **A. Overview of the Payment Error Rate Measurement Program**

The purpose of the Payment Error Rate Measurement (PERM) program is to measure and report a national payment improper payment rate for Medicaid and the Children's Health Insurance Program (CHIP) to comply with the requirements of the Improper Payments Elimination and Recovery Improvement Act (IPERIA) (2012). The Centers for Medicare & Medicaid Services (CMS) uses a 17-state rotation per cycle, reviewing each state every three years. The PERM Statistical Contractor (SC) selects a stratified random sample of payments from each state's universe of payments for one Fiscal Year (FY). The PERM Review Contractor (RC) reviews all claims sampled to determine if each state's payment decisions complied with applicable federal regulations and state policies.

### **B. PERM Legislative Background**

The Improper Payments Information Act of 2002 (IPIA) Pub. L. 107-300, enacted on November 26, 2002, required the heads of federal agencies annually to review programs they oversee that are susceptible to significant erroneous payments. The IPIA directed the Office of Management and Budget (OMB) to provide guidance on implementation. OMB defined "significant erroneous payments" as annual erroneous payments in the program exceeding both 2.5 percent of program payments and \$10 million (OMB M-03-13, May 21, 2003 and OMB M-06-23, August 10, 2006).

According to the OMB directive, federal agencies must report to the President and Congress: (1) the estimate of the annual amount of erroneous payments; (2) the causes of the errors and actions taken to correct them, including plans to increase agency accountability; (3) the amount of actual erroneous payments the agency expects to recover; (4) limitations that prevent the agency from reducing the erroneous payment levels (for example, resources or legal barriers); and (5) a target for the program's future payment rate, if applicable.

OMB identified the Medicaid program and CHIP as at risk for significant erroneous payments. OMB directed the Department of Health and Human Services (HHS) to report the estimated improper payment rates for the Medicaid program and CHIP each year for inclusion in the Agency Financial Report (AFR). Through the Payment Accuracy Measurement (PAM) and PERM pilot projects that CMS operated in FYs 2002 through 2005, CMS developed a claims-based review methodology designed to estimate state-specific improper payment rates for all adjudicated claims within three percent of the true population improper payment rate with 95 percent confidence. An "adjudicated claim" is a claim for which either the payer obligated money to pay the claim (paid claims) or for which the payer made a decision to deny the claim (denied claims).

The Improper Payments Elimination and Recovery Act (IPERA), Pub. L. 111-204, amended the IPIA on July 10, 2010. IPERA requires agencies to conduct annual risk assessments, and if an agency finds a program to be susceptible to significant improper payments, the agency must measure improper payments in that program.

On January 10, 2013, IPERIA, Pub. L. 112-248, further amended IPERA. The aim of IPERIA is

to emphasize the importance of not only identifying and recovering improper payments but also to conduct the necessary analyses to reduce improper payments.

### **C. CMS Rulemaking**

Section 1102(a) of the Social Security Act (the Act) authorizes the Secretary to establish rules and regulations necessary for the efficient administration of the Medicaid program and CHIP. The Medicaid statute at section 1902(a) (6) of the Act and the CHIP statute at section 2107(b) (1) of the Act require states to provide information the Secretary finds necessary for the administration, evaluation, and verification of the states' programs. Also, section 1902(a) (27) of the Act (and 42 CFR 457.950) requires providers to submit information regarding payments and claims as the Secretary, state agency, or both request that information.

Under the authority of these statutory provisions, CMS published a proposed rule on August 27, 2004 (69 FR 52620) to comply with the requirements of the IPIA and the OMB guidance. Based on the methodology developed in the PAM and PERM pilot projects, the proposed rule set forth provisions for all states annually to estimate improper payments in their Medicaid program and CHIP and to report the state-specific improper payment rates for purposes of computing the national improper payment estimates for these programs. The intended effects of the proposed rule were to have states measure improper payments based on Fee-For-Service (FFS), managed care, and eligibility reviews; to identify errors; to target corrective actions; to reduce the rate of improper payments; and to produce a corresponding increase in program savings at both the state and federal levels.

After extensive analysis of the issues related to having states measure improper payments in Medicaid and CHIP, including a review of public comments on the provisions in the proposed rule, CMS revised its approach. CMS adopted the recommendation to engage federal contractors to review state Medicaid and CHIP FFS and managed care claims, and to calculate the state-specific and national improper payment rates for Medicaid and CHIP. CMS also adopted the recommendation to sample a subset of states each year rather than to measure every state every year. CMS implemented these recommendations primarily in response to commenters' concerns with the cost and burden the proposed rule would have imposed on states to implement the regulatory provisions at the state level.

Since CMS' revised approach departed significantly from the one described in the proposed rule, CMS published an interim final rule with comment period on October 5, 2005 (70 FR 58260). The October 5, 2005, interim final rule with comment period responded to the public comments on the proposed rule, and informed the public of the national contracting strategy and of the plan to measure improper payments in a subset of states. The PERM program will measure a state once, and only once, every three years for each program. For each FY, CMS stated that it expected to measure up to 18 states.

In the October 5, 2005, interim final rule, CMS stated that states sampled for review may still be required to conduct eligibility reviews as described in the proposed rule.

CMS also announced its intentions to establish an eligibility workgroup to make recommendations on the best approach for reviewing Medicaid and CHIP eligibility within the

confines of current statute, with minimal impact on states and additional discretionary funding. CMS convened an eligibility workgroup comprised of HHS [including CMS and, in an advisory capacity, the Office of the Inspector General (OIG)], OMB, and representatives from two states. CMS determined that states should conduct the eligibility measurement and developed an eligibility measurement methodology based on the workgroup's consideration of public comments, the examination of various approaches proposed in such comments, and the suggestions of the panel members. The October 5, 2005, interim final rule also set forth the types of information that states would submit to the federal contractors for the purpose of estimating Medicaid and CHIP FFS improper payments and invited further comments on methods for estimating eligibility and managed care improper payments. CMS received very few comments regarding managed care and a number of comments regarding eligibility.

Based on the public comments and recommendations from the eligibility workgroup, CMS published a second interim final rule on August 28, 2006 (71 FR 51050), which established the methodology for measuring improper payments in Medicaid and CHIP FFS, managed care, and eligibility in 17 states per cycle and invited further public comments on the eligibility measurement. CMS implemented the PERM program in a final rule published on August 31, 2007 (72 FR 50490). The August 31, 2007, final rule responded to the public comments on the August 28, 2006, interim final rule and finalized state requirements for submitting claims to the federal contractors that conduct FFS and managed care reviews. The final rule also finalized state requirements for conducting eligibility reviews and estimating improper payment rates due to errors in eligibility determinations.

On February 4, 2009, the federal government enacted the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) (Pub. L. 111-3). Sections 203 and 601 of the CHIPRA relate to the PERM and Medicaid Eligibility Quality Control (MEQC) programs. Section 203 of the CHIPRA establishes an improper payment rate measurement with respect to the enrollment of children under the Express Lane Eligibility option. The law directs states not to include children enrolled using the Express Lane Eligibility option in data or samples used for purposes of complying with the MEQC and PERM requirements.

Section 601(a) of the CHIPRA provides for a 90 percent federal match for CHIP expenditures related to PERM administration and excludes such expenditures from the 10 percent administrative cap. (Section 2105(c)(2) of the CHIP statute gives states the ability to use an amount up to 10 percent of the CHIP benefit expenditures for outreach efforts, additional services other than the standard benefit package for low-income children, and administrative costs.) The CHIPRA required a new PERM rule and delayed any calculation of a PERM improper payment rate for CHIP until six months after the new PERM rule was effective. The CHIPRA required that the new PERM rule include the following:

- Clearly defined criteria for errors for both states and providers
- Clearly defined processes for appealing error determinations
- Clearly defined responsibilities and deadlines for states in implementing any Corrective Action Plans (CAPs)

- A provision that the improper payment rate for a state will not include payment errors based on a state's verification of an applicant's self-declaration if a state's self-declaration verification policies meet regulations promulgated by the Secretary or are approved by the Secretary
- State-specific sample sizes for application of the PERM requirements to CHIP PERM

In addition, the CHIPRA aimed to harmonize the PERM and MEQC programs and provide states with the option to apply PERM data from eligibility reviews to meet MEQC requirements and vice versa, with certain conditions.

As required by the CHIPRA, CMS proposed revised MEQC and PERM provisions in the proposed rule published in the July 15, 2009, Federal Register (74 FR 34468). CMS implemented a revised program through a final PERM rule published on August 11, 2010 (75 FR 48815). In addition to the provisions required by CHIPRA, the final PERM rule (75 FR 48815) addresses the claims universe, sampling, and review; the eligibility universe, sampling and review; error determination and rate calculation; Difference Resolution (DR) and Appeals; and the corrective action process.

In 2010, the federal government enacted significant changes to the Medicaid program and CHIP and these change directly affected the PERM program. As a result of this implementation, the Data Processing (DP) review process expanded to ensure state compliance with new provider enrollment and risk-based screening requirements. The RC reviews provider information to verify billing, attending/servicing, and ordering/referring providers were registered and eligible to provide services (per 42 CFR 455.410).

In light of the changes to the way states adjudicate eligibility for applicants for Medicaid and CHIP required by law, the State Health Official (SHO) letter 13-005 issued on August 15, 2013, directed states to implement Medicaid and CHIP Eligibility Review Pilots in place of PERM and MEQC eligibility review requirements for FYs 2014-2017.<sup>1</sup> CMS subsequently recommended an extension of these pilots for an additional year, so that the PERM eligibility component will resume in Reporting Year (RY) 2019. The Medicaid and CHIP Eligibility Review Pilots will continue in FY 2017 in an effort to provide more targeted, detailed information on the accuracy of eligibility determinations and to provide states and CMS with critical feedback during initial implementation.

On July 5, 2017, CMS published a final rule in the *Federal Register* (82 FR 31158) that implements changes to the PERM program and implements various other improvements to both the PERM and MEQC programs.

Prior to the publication of the final rule, CMS was not conducting the eligibility measurement component of the PERM program while it updated the eligibility component measurement methodology and related PERM program regulations. However, as of the effective date of the

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<sup>1</sup> Guidance related to the FY 2014-2017 eligibility pilots can be found on the CMS PERM website: [https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicaid-and-CHIP-Compliance/PERM/FY2014\\_FY2016EligibilityReviewPilots-.html](https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicaid-and-CHIP-Compliance/PERM/FY2014_FY2016EligibilityReviewPilots-.html)



final rule, the eligibility measurement component resumes.

Specific changes to the PERM program in this final rule include changing the review period so that PERM reviews state Medicaid and CHIP payments July through June of a given year (a instead of October through September (a federal FY). A federal contractor—known as the Eligibility Review Contractor (ERC)—will begin conducting PERM eligibility reviews on beneficiaries associated with sampled FFS and managed care claims, with support from each state, for RY 2019. Previously, states created separate universes of eligible individuals to sample for eligibility review.

The PERM program cites improper payments if the federal share amount is incorrect (even if the total computable amount is correct). Previously, PERM only cited improper payments on the total computable amount (i.e., federal share plus state share). The PERM program will also now calculate a national sample size to meet national Medicaid and CHIP improper payment rate precision requirements. PERM will distribute the national sample size across states to maximize precision at the state level. The basis for state-specific sample sizes will include factors such as a state's expenditures and previous improper payment rate. Previously, PERM calculated state-specific sample sizes based on the state's previous improper payment rate and state-level precision, combining this information to generate the national sample size. Under the new rule, states will continue to implement CAPs for all errors and deficiencies; however, there will be more stringent requirements added for states that have consecutive PERM eligibility improper payment rates over the 3 percent national standard.

The final rule also makes changes to the MEQC program—a separate eligibility review program that requires states to report to the HHS Secretary the ratio of states' erroneous excess payments for medical assistance under the state plan to total expenditures for medical assistance. These changes include: the restructuring of the MEQC program into a pilot program that states must conduct during their off-years from the PERM program; a requirement for states to review a number of items not fully reviewed through the PERM program (e.g., negative cases); a mechanism that enables CMS to provide direction for reviews if states have consecutive PERM eligibility improper payment rates over the 3 percent national standard; and a requirement for states to submit corrective actions for identified errors.

#### **D. Definitions**

**Active fraud investigation:** A beneficiary or a provider that a state has referred to the state Medicaid Fraud Control Unit or similar federal or state investigative entity (including a federal oversight agency) and the unit is currently actively pursuing an investigation to determine whether the beneficiary or the provider committed health care fraud. This definition applies to both claims and eligibility.

**Adjudicated claim:** A claim where the state's processing system has accepted and reviewed and the state has made a final decision to pay or to deny the claim. Therefore, an adjudicated claim can be either a paid claim or a denied claim.

**Adjustment:** An adjustment refers to a change to a previously processed claim. An adjusted claim can be linked to the original claim.

**Administrative Services Only (ASO):** A contractual arrangement under which an insurance company or other independent organization handles the administration of claims, benefits and other functions for a self-insured group or on behalf of a public entity, such as a state Medicaid program.

**Agency Financial Report (AFR):** Annual report published by HHS that provides fiscal and high-level performance results of agency activities, including Medicaid and CHIP improper payment rates.

**Annual sample size:** The number of FFS claims or lines or managed care payments necessary to meet precision requirements in a given PERM cycle.

**Beneficiary:** A recipient of Medicaid program or CHIP benefits.

**Capitation:** A previously determined (fixed) payment, usually made on a monthly basis, for each beneficiary enrolled in a managed care plan or for each beneficiary eligible for a specific service or set of services.

**Children's Health Insurance Program (CHIP):** A program that provides health coverage to eligible children, through both Medicaid and separate CHIP. CHIP is administered by states, according to federal requirements (42 CFR Part 457). The program is funded jointly by states and the federal government and is authorized under Title XXI of the Act.

**CHIP universe (Claims):** Claims for services paid with Title XXI funds, including Title XXI Medicaid expansion claims and payments (where beneficiaries are Medicaid enrollees, but their claims and payments are matched with Title XXI funding) that are funded under CHIP.

**Claim:** A request for payment, on either an approved form or electronic media, for services rendered generally relating to the care and treatment of a disease or injury or for preventative care. A claim may consist of one or several line items or services.

**Copay:** A payment a beneficiary makes for a service in addition to what the Medicaid program or CHIP reimburses providers for the service.

**Data Processing (DP) error:** A payment error that can be determined from the information available on the claim or from other information available in the state Medicaid/CHIP claims processing system (exclusive of Medical Reviews (MRs) and eligibility reviews).

**Denied claim or line item:** A denied claim or line item is one the claim processing system has accepted and reviewed and the state has made a final decision not to pay the claim or line item in whole or in part.

**Difference Resolution (DR):** A process that allows states to dispute the RC's error findings.

**Encounter data:** Encounter data or "shadow claims" are informational-only records providers or Managed Care Organizations (MCOs) submit to a state for services covered under a managed care capitation payment. A state often collects these data to track utilization, assess access to care, and possibly to compute risk adjustment factors for at-risk managed care contractors.

Encounter data are not claims submitted for payment.

**Eligibility:** Meeting the state's categorical and financial criteria for receiving benefits under the Medicaid program or CHIP.

**Federal Financial Participation (FFP):** The share of Medicaid payments made by the federal government.

**Fee-For-service (FFS):** A traditional method of paying for medical services by which a state pays providers for each service rendered.

**FFS processing error:** A payment error that can be determined from the information available on the claim or from other information available in the state Medicaid/CHIP system (exclusive of Medical Reviews (MRs) and eligibility reviews).

**Finite population correction factor:** A statistical calculation that the state or the SC may employ to determine sample sizes as an alternative to the base rates when sampling programs in which the total (full year) sample is drawn from a population of less than 10,000 individuals/claims.

**Health Insurance Premium Payment (HIPP) program:** A program allowing states to choose to have Medicaid or CHIP pay beneficiaries' private health insurance premiums when it is more cost-effective than paying for the full cost of Medicaid or CHIP services.

**Improper payment:** An improper payment is defined by IPERIA of 2012 as "Any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements. Incorrect amounts are overpayments and underpayments (including inappropriate denials of payment or service). An improper payment includes any payment that was made to an ineligible recipient or for an ineligible service, duplicate payments, payments for services not received, and payments that are for the incorrect amount. In addition, when an agency's review is unable to discern whether payment was proper as a result of insufficient or lack of documentation, this payment must also be considered an error."

**Improper payment rate:** An annual estimate of improper payments made under Medicaid and CHIP equal to the sum of the overpayments and underpayments in the sample; that is, the absolute value of such payments, expressed as a percentage of total payments made in the sample.

**Individual reinsurance:** In the context of PERM managed care universe files, individual reinsurance payments are those payments made by the state to a managed care plan for an individual beneficiary whose cost of care has exceeded a predetermined maximum amount, usually measured on an annual basis or based on a specific episode of care. Such payment by the state typically represents a cost-sharing arrangement with a managed care plan for extremely high-cost enrollees. Individual reinsurance may be based on the costs associated with all services the managed care plan provides, or may be limited to excessive costs associated with certain services (e.g., transplants). (Note: The PERM program considers providers whose payment rates are fully reconciled for actual costs incurred, on a retrospective basis, FFS.)

**Kick payment:** Supplemental payment over and above the capitation payment made to managed care plans for beneficiaries utilizing a specified set of services or having a certain condition.

**Line item:** An individually-priced service presented on a claim for payment.

**Managed care:** A system where the state contracts with health plans, on a prospective full-risk or partial-risk basis, to deliver health services through a specified network of doctors and hospitals. The health plan is then responsible for reimbursing providers for specific services delivered.

**Managed Care Organization (MCO):** An entity that has entered into a risk contract, with a state Medicaid and/or CHIP agency, to provide a specified package of benefits to Medicaid and/or CHIP beneficiaries. The MCO assumes financial responsibility for services delivered and is responsible for contracting with and reimbursing servicing providers. State payments to MCOs typically are a monthly capitation payment per enrolled beneficiary.

**Medicaid:** A program that provides health coverage to millions of Americans, including eligible low-income adults, children, pregnant women, elderly adults and people with disabilities. Medicaid is administered by states, according to federal requirements (42 CFR 431). The program is funded jointly by states and the federal government under Title XIX of the Act.

**Medicaid universe (Claims):** Claims for all services paid with Title XIX funds.

**Medical Review (MR) error:** An error that is determined from a review of the medical documentation in conjunction with federal regulations, state medical policies, and information presented on the claim.

**Medicare:** The federal health insurance program for people 65 years of age or older and certain younger people with disabilities or end stage renal disease.

**Non-claims based sampling unit:** Sampling units not related to a particular service provided, such as Medicare Part A or Part B premiums.

**Overpayment:** Overpayments occur when Medicaid or CHIP pays more than the amount the provider was entitled to receive or more than its share of the cost.

**Paid claim:** A claim or line item that the claims processing or payment system accepted, adjudicated for payment, determined to be a covered service eligible for payment, and for which a payment was issued or no payment was owed due to circumstances such as payment by a third-party insurer.

**Partial error:** Partial errors are those that affect only a portion of the payment on a claim.

**Patient liability:** The term used by the Medicaid program to refer to the Medicaid beneficiary's financial obligation toward the cost of care each month.

**Payment:** Any payment to a provider, insurer, or MCO for a Medicaid or CHIP beneficiary for which there is Medicaid or CHIP FFP. It may also mean a direct payment to a Medicaid or CHIP beneficiary in limited circumstances permitted by CMS regulations or policy.

**PERM website:** The official CMS website for the PERM program located at <http://www.cms.gov/PERM>.

**PERM+:** A claims and payment data submission method through which the state submits claims, provider, and beneficiary data to the SC. The SC uses the data to build sampling universes from which it selects a sample of claims. After selecting the samples, the SC sends the samples to the RC and the states. The SC then populates the sampled FFS claims with detailed service, payment, provider, and beneficiary information and sends these samples to the RC to facilitate the RC requesting medical records.

**Prepaid Ambulatory Health Plan (PAHP):** A benefit that states may choose to offer enrollees on the basis of prepaid capitation payments, or other payment arrangements that do not use State Plan payment rates; does not provide or arrange for, and is not otherwise responsible for the provision of any inpatient hospital or institutional services for its enrollees; and does not have a comprehensive risk contract.

**Prepaid Inpatient Health Plan (PIHP):** A benefit that states may choose to offer enrollees on the basis of prepaid capitation payments or other payment arrangements that do not use State Plan payment rates; provides, arranges for, or otherwise has responsibility for the provision of any inpatient hospital or institutional services for its enrollees; and does not have a comprehensive risk contract.

**Primary Care Case Management (PCCM):** A program that links beneficiaries to a primary care provider who coordinates their health care. Providers receive small additional payments to compensate for care management responsibilities, typically on a Per-Member-Per-Month (PMPM) basis. Providers are not at financial risk for the services they provide or authorize.

**Program of All-inclusive Care for the Elderly (PACE):** A benefit that states may choose to offer to Medicaid beneficiaries age 55 or older in an effort to keep individuals in the community who would otherwise be determined to require the level of care provided by a nursing facility. Qualifying beneficiaries receive all Medicaid-covered services through their PACE provider. States pay PACE providers on a capitation basis. PACE providers must meet minimum federal standards.

**Provider error:** This includes, but is not limited to, MR errors as described in 42 CFR 431.960(c), as determined in accordance with documented state or federal policies, or both.

**Risk-based managed care:** The MCO assumes either partial or full financial risk. The payer pays the MCO a fixed monthly premium per beneficiary.

**Routine PERM:** A claims and payment data submission method through which the state submits claims universes to the SC. The SC draws a random sample of claims from the quarterly universes the state submits. After drawing the samples, the SC sends the RC the samples. The SC also sends the states a list of their sampled claims, and states populate sampled FFS claims with detailed service and payment information for the SC. The SC formats the state submissions and sends them to the RC to facilitate the RC requesting medical records.

**Sample:** A random sample of claims selected from a universe (see “universe” definition below).

**Sampling unit:** The sampling unit for each sample is an individually priced service (e.g., a physician office visit, a hospital stay, a month of enrollment in a managed care plan or a monthly Medicare premium). Depending on the universe (i.e., FFS or managed care), the sampling unit may include claim, line item, premium payment, or capitation payment.

**State error:** This includes, but is not limited to, DP errors and eligibility errors as described in 42 CFR 431.960(b) and (d), as determined in accordance with documented state or federal policies or both.

**State Systems Workgroup (SSW):** A collaborative group consisting of CMS, the PERM SC, the PERM RC, the Regional Offices (ROs), and the states to address state system issues. This group works together to determine the underlying problems and discuss how the issues can be resolved.

**Stop-loss:** See “Individual Reinsurance,” above.

**Supplemental payments for specific services or events:** Often called “kick” payments, these are payments a state may make to an MCO on behalf of a particular enrollee in the managed care plan based on the provision of a particular service or the occurrence of a particular event, such as childbirth.

**Third-Party Liability (TPL):** The term used by the Medicaid program to refer to another source of payment for covered services provided to a Medicaid beneficiary. In cases of available TPL, Medicaid is the payer of last resort.

**Underpayment:** Underpayments occur when the state pays less than the amount the provider was entitled to receive based on existing policy and contracts.

**Universe (Claims):** The universe is the set of sampling units from which the sample for a particular program area is drawn and the set of payments for which the improper payment rate is inferred from the sample. The PERM program uses the term “claim” interchangeably with the term “sampling unit.”

**Zero-paid claim:** A zero-paid claim or line is one the claims processing or payment system has accepted, adjudicated and approved for payment, but for which the actual amount remitted was zero dollars. This can occur due to TPL, application of deductibles and patient liability, or other causes.

## **E. PERM Partners and Their Responsibilities**

CMS contracts with three vendors to conduct the FFS and managed care components of the PERM measurement and improper payment rate calculation: an SC, an RC, and an ERC.

The SC’s responsibilities include:

- Conducting intake meetings with state staff prior to each cycle to collect relevant information about systems, programs, and payment methodologies

- Collecting quarterly FFS claims and managed care capitation payment universes from each state
- Conducting extensive quality control review checks on each submitted universe, including comparing PERM universe data to state-submitted CMS-64 and CMS-21 reports
- Selecting quarterly random samples from each submitted universe for the RC's review
- Calculating state and national improper payment rates
- Creating error analysis reports for states to use for corrective action purposes
- Maintaining the PERM Eligibility Tracking Tool (PETT) 2.0, which states use to report FY 2014-2017 pilot proposals and findings
- Supporting CMS in reviewing state-submitted FY 2014-2017 pilot proposals and findings

The RC's responsibilities include:

- Researching, requesting, and collecting applicable federal regulations under 42 CFR, and state medical and claims payment policies from states' publicly available websites
- Requesting and receiving medical records from providers for sampled payments
- Conducting DP reviews (on-site or remote) on all sampled claims and MR on FFS claims
- Hosting the RC website, which tracks all records requested/received; tracks reviews completed; provides specific reports needed to track errors and outcomes; and provides an automated mechanism for requesting DRs and Appeals
- Visiting state offices and/or providing web-based calls for orientation to the RC process
- Conducting RC website orientation webinars/calls

States are critical partners in the PERM process and have the following responsibilities:

- Identifying and supporting a state representative who serves as the central point of contact and coordinates state PERM activities
- Supplying and processing all appropriate instructions and forms required to enable the RC to gain access to state systems
- Granting the RC access to state systems and other documentation as required to complete DP reviews and MR
- Educating all relevant state staff and vendors on the PERM process and data requirements
- Providing advance notification to CMS and contractors for any program changes, including new or ended programs, new reimbursement methodologies, or new

systems

- Providing all claims and payment data to the SC in the required format and conducting quality control reviews prior to submission to ensure compliance with specifications
- Providing timely and thorough responses to any contractor questions on the state-submitted data to support the PERM timeline
- Providing timely and thorough responses to any requests from the RC for additional documentation needed to complete DP reviews
- Educating providers on the PERM process and assisting with medical record collection

CMS also has specified responsibilities as partners in PERM. These responsibilities include:

- Structuring the parameters for measurement through legal and policy decision-making processes
- Overseeing the operation of PERM and PERM contractors to ensure that CMS meets its regulatory requirements
- Providing guidance and technical assistance to states throughout the process
- Ensuring measurement remains on track and working with states when challenges occur
- Coordinating and hosting monthly calls with all cycle states
- Reviewing any state-requested Appeals of error findings
- Providing educational resources for Medicaid and CHIP providers
- Providing assistance as states develop corrective actions
- Ensuring improper payments are recovered

See additional information on the SC's, RC's and ERC's responsibilities in the next section.

#### ***a. Statistical Contractor***

The SC has the following primary responsibilities: conducting Intake Meetings with the states prior to each cycle; collecting quarterly claims and capitation payment universe data; conducting quality review of the submitted data; selecting quarterly samples from the universes; calculating improper payment rates; and creating error analysis reports to assist in states' corrective actions.

#### ***Conducting Intake Meetings with States***

The SC conducts an Intake Meeting with state policy, technical, and financial staff prior to the start of each PERM cycle. The SC and the state discuss the following:

- The specifications of and principles guiding the PERM universe
- Guidance for the state to build the FFS and managed care universe data for submission
- Types of payments included in and excluded from the PERM universes



- Data sources and documentation
- The overall PERM process with an emphasis on data quality review

The second component of this meeting involves the SC collecting relevant information about the state's Medicaid program and CHIP, data systems, and FFS and managed care payment methodologies, including nuances of the state's data and programs. The Intake Meeting serves as a forum for the states to ask the SC questions. Furthermore, the detailed discussions between the states and the SC help in shaping the state's PERM data submissions. The SC also holds separate, shorter Intake Meetings with the data and CMS-64/21 financial staff.

### ***Collecting Quarterly Claims and Capitation Payment Data***

The SC collects Medicaid and CHIP FFS and managed care universe data from the states each quarter throughout the PERM cycle. Depending on the data submission method the state, the SC, and CMS choose, these data could be relatively clean PERM universes or relatively raw claims and payments. The quarterly submissions are due to the SC 15 days after the end of each quarter.

### ***Conducting Quality Review of State-submitted PERM Universes***

The SC performs extensive quality review of the states' universes. The review begins with the SC comparing the received quarterly data against the state-submitted summary of total records and dollars transmitted to ensure that no data were lost during transmission. The SC performs detailed checks to ensure the data are not corrupted. If the SC identifies issues during the initial quality review, the SC contacts the state for clarification. In most cases, issues must be resolved before the SC can conduct further processing.

Once the data have cleared the first stage of review, the SC performs more in-depth quality checks. In this phase, the SC's tasks include, but are not limited to, ensuring that there are no:

- Adjustments
- Payments not matched with federal dollars or not fully adjudicated
- Unexpected or missing payment amounts
- Payments outside of the quarter
- Missing lines for relevant claims
- Missing unique identifiers

The SC also reviews trends and patterns of payments within the state and across all states to ensure that the universes are accurate and PERM-compliant. The SC further compares the total dollars reported by the states in their CMS 64/21 reports with the dollars represented in the PERM universes. The comparisons allow the SC and the states to ensure that the PERM sampling universes contain all relevant federally matched payments.

If issues and questions arise during the quality review process, the SC will contact states for more information. It is important to note that before the SC can select samples, the PERM universes must pass all stages of quality checks. Therefore, state cooperation is extremely

important.

### ***Selecting Quarterly Samples from the FFS and Managed Care Universes***

From each quality-reviewed FFS and managed care universe that the SC deems complete, compliant, and accurate for sampling, the SC selects a random sample of payments based on the sample sizes and sampling methodology shared with the states prior to the beginning of the cycle. The SC then reviews the selected samples to ensure the information the RC requires to begin DP review is present. If necessary, the SC will contact the state for additional information. The SC then sends the samples to the RC and to the states.

Depending on the state's data submission method, for FFS samples, the SC requests from the state or populates the "sample details," which consist of provider, beneficiary, and detailed service information for the sampled claims. These sample details go through in-depth quality review to ensure the information necessary for the RC to conduct MRRs is available. Once deemed complete and correct, the sample details are standardized and formatted. The SC then sends the sample details to the RC.

### ***Calculating State and National Improper Payment Rates***

The SC calculates FFS, managed care, and overall improper payment rates for Medicaid and CHIP on national rolling, cycle, and state levels. Along with these improper payment rates, the SC includes the total number of errors and total projected improper payments for the FFS and managed care components and overall programs on each level. The SC also calculates the state-specific FFS and managed care sample sizes for the next PERM cycle.

### ***Creating Error Analysis Reports to Assist States' Corrective Actions***

Based on the errors identified by the RC, the SC compiles state-specific and program-specific error analysis reports. These detailed reports include information on the errors found within the state sample, along with the types of errors and reasons for those errors. States review each sampled claim in error. States use information gained from this process to formulate CAPs.

#### ***b. Review Contractor***

The RC has three primary responsibilities: collecting federal regulations and state policies; obtaining medical records for sampled payments; and conducting DP reviews and MRs.

### ***Collecting Federal Regulations and State Policies***

The RC collects applicable federal regulations as well as state Medicaid and CHIP policies. The federal regulations collected relate to:

- Timely filing requirements
- Requirements for provider enrollment and risk-based screening
- Health Insurance Portability and Accountability Act of 1996 (HIPAA) 5010 electronic claims standards

- Appropriate level of care and documentation standards

The RC researches and obtains the state Medicaid and CHIP policies it uses for the medical and DP reviews from states' publicly available websites. The RC may ask states for additional documentation or policies that may not be publicly available. Examples of additional documentation the RC may request are:

- Claims payment policies
- Fee schedules
- Processing system navigational manuals to conduct DP reviews

### ***Requesting Medical Records***

When the RC receives sampled claims detail data from the SC, the RC contacts the providers of the sampled FFS claims to obtain copies of medical records for the claims in question. If the records received do not contain sufficient documentation, the RC requests additional documentation from the provider.

### ***Conducting Data Processing and Medical Reviews***

When the RC receives the sample list from the SC, the RC schedules DP reviews with each of the states. For FFS claims, the DP review includes examining line items in each claim to validate the state processed the claim correctly. The RC also performs DP reviews on managed care payments to determine if the state accurately processed the capitation payment or premium. The RC also conducts MRs on FFS claims; however, managed care claims are not subject to MRs because there is no specific service rendered on which to make a medical necessity determination. The RC examines the medical record to ensure there is documentation that supports the claim billed, medical necessity, and coding accuracy.

## **F. PERM Cycles**

CMS uses a rotational approach to review the states' Medicaid program and CHIP so that the PERM program measures each state once every three years. At the end of each three-year cycle, the rotation repeats so that the FY 2015 states (reported in 2016) will be reviewed again in RY 2019; the FY 2016 states will be reviewed again in RY 2020; and the FY 2017 states will be reviewed again in RY 2021.

CMS calculates a rolling national improper payment rate, which combines the most current findings from the three prior measurement cycles, using information from all 50 states and the District of Columbia (D.C.) to produce the improper payment rate for the current FY. HHS publishes the improper payment rate for the current FY in the AFR. Each time PERM measures a group of 17 states, PERM drops from the calculation the previous findings for that group of states and adds the newest findings.

***Exhibit 1*** shows a list of states and their assignment within the rotation cycles.

### Exhibit 1. Medicaid and CHIP Measurement Cycles

Cycle	Includes Payments from These FYs	States
One	FY 2009 FY 2012 FY 2015 RY 2019	Arkansas, Connecticut, Delaware, Idaho, Illinois, Kansas, Michigan, Minnesota, Missouri, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, Virginia, Wisconsin, Wyoming
Two	FY 2010 FY 2013 FY 2016 RY 2020	Alabama, California, Colorado, Georgia, Kentucky, Maryland, Massachusetts, Nebraska, New Hampshire, New Jersey, North Carolina, Rhode Island, South Carolina, Tennessee, Utah, Vermont, West Virginia
Three	FY 2011 FY 2014 FY 2017 RY 2021	Alaska, Arizona, District of Columbia, Florida, Hawaii, Indiana, Iowa, Louisiana, Maine, Mississippi, Montana, Nevada, New York, Oregon, South Dakota, Texas, Washington

CMS assigns a State Liaison from the Agency to each state within each PERM cycle. This person serves as the state's main point-of-contact for that measurement, ensures the measurement timeline stays on track, and handles any issues that occur throughout a cycle.

#### *a. Timeline*

**Exhibit 2** provides a timeline of major PERM activities for the states, SC, and RC for claims activities and a high-level timeline. This manual addresses specific claims with due dates in Section 20 – Claims Universe and Sampling.

**Exhibit 2. PERM FY 2017 Process Estimated Timeline\***

Timeframe	Event
July 1 (prior to federal FY being measured)	PERM cycle begins
September 15	PERM education sessions with CMS, SC, and RC begin
	States notify CMS and SC of method of PERM data submission (Routine PERM or PERM+)
October 1	State intake meetings with CMS and the SC begin
January 15	States submit 1 <sup>st</sup> quarter (October – December) adjudicated claims to the SC
January – June	RC researches and obtains states’ policies from relevant websites, develops Master Policy Lists (MPLs), and finalizes MPLs with states
April 15	States submit 2 <sup>nd</sup> quarter (January – March) adjudicated claims to the SC
June	RC begins MRRs when detail data is received from the SC
July	RC begins DP reviews on-site or remotely
July 15	States submit 3 <sup>rd</sup> quarter (April – June) adjudicated claims to the SC
August	RC begins MRs
October 15 (following the FY being measured)	States submit 4 <sup>th</sup> quarter (July – September) adjudicated claims to the SC
July 15	Typical CMS cycle cutoff date
August	RC submits final findings to the SC and the SC calculates improper payment rates
November (two Fys after the FY being measured)	National rates published in AFR and states notified of state improper payment rates and preliminary state-specific sample sizes for the following cycle
February	States submit CAPs addressing identified errors and deficiencies
Throughout PERM process	States identify and resolve differences in review findings with the RC and then with CMS through the Appeals process if they disagree with the RC’s decision
One year from receipt of Final Errors For Recovery (FEFR) report	States return the FFP of identified FFS and managed care overpayments

***b. Data Use Agreement***

The RC and SC require access to sampling units stored in states’ Medicaid Management Information Systems (MMIS) and eligibility systems. Section 1902 (a)(6) of the Act requires the state agency to make such reports, in such form and containing such information as the Secretary

may require, and comply with such provisions as the Secretary may find necessary to assure the correctness and verification of such reports. 42 CFR 430.32 is a parallel authority. CMS is operating the PERM program under the final rule FR/Vol. 75, No. 154 as published on August 11, 2010, in the Federal Register (42 CFR Parts 431 and 457).

The RC and SC are business associates of CMS pursuant to 45 CFR 164.502 € and under contract to perform the scope of work for the PERM project. The RC and SC were required to sign a business associate agreement as specified at 45 CFR 164.504 €. CMS contractors must abide by the terms and conditions of these contractual agreements, which incorporate HIPAA and Privacy Act provisions requiring security measures and imposing limitation on use.

### ***c. Record Retention Requirements***

PERM has several different record retention requirements:

***Inputs*** – Outgoing correspondence for reference of case activity, posting recoveries, account balances, recoupment activities, CMS-mandated reports and letters; eligible debts for collection; overpayment data from providers; Medicare Secondary Payer (MSP), Medicaid/CHIP claims data from states, and medical records from providers.

**Disposition:** Delete/destroy five years after cutoff or when no longer needed for Agency business, whichever is later. (Disposition Authority: NARA’S GRS 20, item 2)

***Master Files*** – Outgoing correspondence for reference of case activity, recoveries, account balances, audit trail of recoupment activities, CMS-mandated reports and letters, eligible debts referred to Treasury for collection; provider overpayments; MSP, Medicaid/CHIP claims data, and medical records from providers.

**Disposition:** Delete/destroy ten years after cutoff or when no longer needed for Agency business, whichever is later. (Disposition Authority: N1-440-09-11)

***Outputs*** – CMS Mandated Reports, Letters and Collection Referrals

**Disposition:** Delete/destroy ten years after cutoff or when no longer needed for Agency business, whichever is later. (Disposition Authority: NARA’s GRS 20, item 6)

***Ad hoc Reports*** – Reports generated for a special purpose or immediate need.

**Disposition:** Delete/destroy one year after cutoff or when no longer needed for Agency business, whichever is later. (Disposition Authority: NARA’s GRS 20, item 16)

## II. PERM Sampling Universe

The PERM program bases its methodology on sampling and reviewing individual payments from a universe of original, federally matched, and fully adjudicated Medicaid and CHIP payments the states made on behalf of individual beneficiaries to providers and other entities for medical services rendered. The RC reviews these samples for errors; state and national-level improper payments are extrapolated from the errors the RC identifies.

A complete and accurate universe is the foundation of PERM sampling and improper payment rate estimation. The PERM program intends for the improper payment rates to be representative of all Medicaid and CHIP payments, and the methodology is predicated on being consistent across states in a given cycle. The PERM states and the SC work together to define and compile the PERM sampling universe.

This section describes the specifications of the PERM sampling universe, the types of payments included in and excluded from the universe, and the process of submitting data to the SC for sampling. Specific instructions for compiling and submitting PERM-compliant universe data are available on the CMS website.

### A. Claim Universe Definitions

The PERM program bases its universe specifications on IPERIA statutory requirements, OMB guidance, and the PERM regulation. The scope of the PERM universe is bound by the following parameters, each of which is described in more detail below:

- Payment amount
- Payment date
- Program type

#### *a. Payment Amount*

IPERIA of 2012 defines an improper payment as a payment a payer made in the incorrect amount, which includes both overpayments and underpayments.<sup>2</sup> While non-zero dollar payments made by the states are potential overpayments, denials and zero-dollar payments are potential underpayments. Therefore, all three types of payments must be included in the PERM universe, provided they meet all other criteria for inclusion.

While the majority of the PERM universe is comprised of non-zero dollar payments, denials and zero-dollar payments are subject to sampling and review as well. Denials are claims that have been fully adjudicated, but denied for payment. Zero-dollar claims are those that have been approved for payment, but due to third-party or beneficiary obligation, the state bears no liability.

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<sup>2</sup> <https://www.gpo.gov/fdsys/pkg/PLAW-112publ248/pdf/PLAW-112publ248.pdf>

The PERM improper payment rate is based on the total computable amount of the payment. This includes federal and state or local share. The total computable amount is the net of beneficiary (e.g. copays and coinsurance), TPL, and other (e.g. taxes paid on waiver services) liability. For certain types of payments made by the states, the system may not retain the total computable amount (e.g. payments made by certified match or in-kind services). For all payments subject to PERM review, states must include the total computable amount in the PERM universe. In Section 30, we describe the PERM sampling methodology, which underscores the importance of the correct total computable amount in the PERM universe.

#### ***b. Payment Date***

The PERM sampling universe includes payments originally made or denied during the federal FY under review. For example, for the FY 2017 PERM cycle, the universe includes claims and payments originally made or denied between October 1, 2016, and September 30, 2017.

To ensure consistency across states, PERM relies on the original paid or denial date to determine whether a payment is included in a given cycle. If a state originally pays a claim during the cycle under review, but adjusts the claim after the cycle, the claim is included in the PERM universe based on the original date of payment. Conversely, if a claim's original date of payment is prior to the PERM cycle, but an adjustment falls within the cycle, the claim is not included in PERM, again, based on the original date of payment. See Section 20.3.1 for more information on the treatment of adjustments in PERM.

If states make payments for prospective or retrospective periods of coverage, the payment should be included as of the actual date of payment. For example, if a state being measured in the October 1, 2016, to September 30, 2017, cycle, makes a retrospective capitation payment on October 5, 2016, for coverage in September 2016, the payment should be included in PERM, even though the state is purchasing coverage for a period outside the FY being measured. Conversely, if a state in the same cycle makes a prospective capitation payment on September 30, 2016, for coverage in October 2016, the payment should not be included in PERM. Even though coverage is being purchased for a period inside the FY being measured, the date of payment falls outside the measurement year.

#### ***c. Program Type***

OMB guidance directs HHS to measure Medicaid and CHIP as programs susceptible to significant improper payments. Therefore, the PERM program creates separate universes for Medicaid and CHIP payments so that PERM can estimate independent improper payment rates for each program. PERM also separates each program into FFS and managed care components based on capitation arrangements.

PERM divides universes based on the FFP match received for the payments. The Medicaid universe includes payments matched with Title XIX and the CHIP universe includes payments matched with Title XXI funds. The CHIP universe contains payments made under both stand-alone and Medicaid expansion-type CHIP (where beneficiaries are enrolled in Medicaid, but their claims are matched with Title XXI FFP).



For denials and zero-dollar paid claims, PERM determines the appropriate universe by the type of FFP, had the claims not been denied or had the claim not had other liability. Similar to claims and payments for which the state has financial liability, it is imperative to identify the appropriate universe for denials and zero-dollar claims.

#### ***d. Services Matched with Both Title XIX and Title XXI Funds***

States may have services that are matched with both Title XIX and Title XXI funds. States must bring these payments to the SC's attention prior to the start of the PERM cycle so the SC can identify the most appropriate universe for these payments.

#### ***e. Denials that Cannot Be Identified as Medicaid or CHIP***

States may have denials for which the type of FFP—had the claims not been denied—cannot be determined. States must bring these payments to the SC's attention prior to the start of the PERM cycle so the SC can identify the most appropriate universe for these payments.

### **B. Fee-For-Service and Managed Care Components**

This section discusses the two components of Medicaid and CHIP universes – FFS and managed care. The primary factor in determining whether a payment is FFS or managed care is who holds the underlying risk for that payment. If the claim represents a payment for a medical service paid directly by the state, the state holds the risk and the payment would typically be classified as FFS. If the payment is a flat payment (e.g., capitation payment) to a vendor (e.g., MCO) that, in turn, is responsible for paying for any services, the vendor holds the risk and that flat payment would be considered managed care. These two components are discussed in more detail below.

#### ***a. Fee-For-Service (FFS) Payments***

FFS includes the traditional method of paying for medical services under which the state pays providers for each service rendered to individual beneficiaries. FFS payments in Medicaid and CHIP generally include inpatient/outpatient hospital, professional, clinic, dental, lab/X-ray/DME, pharmacy, and long term services and supports claims. These payments can be for FFS beneficiaries or managed care members, if the service is not included in the managed care capitated agreement and is paid for under FFS. These claims are typically processed through the MMIS or other payment systems, including other state agencies and third-party vendors. In order to be considered FFS, however, the actual cost of the claim should be paid by the state through a pass-through or administrative services agreement, where the state is still at full risk for the cost of the claims.

FFS also includes non-managed care fixed payments to providers, which are described below in more detail. There are also payments to MCOs that would be included in FFS, such as reinsurance or stop-loss payments made for managed care enrollees. Like all other PERM payments, these payments must be matched with Title XIX or Title XXI funds and must meet all other criteria for inclusion in PERM. These payments must also be made on behalf of individual beneficiaries to purchase medical services.

There are certain payments that states make to MCOs that would be considered FFS. Reinsurance or stop-loss payments made for managed care enrollees are not included in the managed care universe; rather, they are included in the FFS universe as fixed payments. Payments made to registered non-risk PIHPs/PAHPs or MCOs under an ASO arrangement would be included in FFS. These payments directly reimburse the vendor for claims that were paid; therefore, the state maintains the risk.

Aggregate payments, which are described in more detail below, are always considered FFS, regardless of the risk. If a full-risk payment to an MCO is for multiple beneficiaries and cannot be broken out to individual beneficiary payments, it is considered an aggregate payment and included in FFS.

### ***b. Managed Care Payments***

Managed care is a delivery system in which a state contracts with MCOs, on a full or partial-risk basis, to deliver health services through a specified network of providers. The state pays a fixed amount, or capitation rate, to the MCO, which is then responsible for managing the care of the member (including case management), and contracting and reimbursing providers for specific services delivered. The MCO, not the state, maintains the financial risk. Managed care payments, which are subject to federal match, can include capitation payments made for a comprehensive package of services (full capitation), for a limited package of services (partial capitation), or for specialty managed care programs for which the capitated provider is at risk (e.g., PACE and behavioral health). The actual claims paid by the MCOs to the providers are not subject to federal match, and are therefore not part of PERM.

The PERM managed care universe also includes supplemental negotiated rate payments made to MCOs on behalf of individual managed care enrollees for specific conditions or situations. These can include maternity “kick” payments, delivery supplemental payments, and newborn supplemental payments. These payments can cover multiple services and can be billed to the state and processed by the state as FFS claims. The MCO still maintains the financial risk for the services included in that payment. As a result, the payment is considered managed care.

### ***c. Small FFS or Managed Care Universes***

States may not have payments for one of the components – managed care or FFS. Also, there are instances where one component is very small in terms of expenditures relative to the other component and overall state program (Medicaid or CHIP) expenditures included in PERM. For instance, PACE is the only managed care program in Medicaid or CHIP that is entirely in managed care, except for a small vaccination program, which is paid by FFS. Applying the normal rules of universe creation to a small component will result in a very large proportion or all of the payments in the component being sampled. In that case, the component improper payment rate will essentially be the improper payment rate of the single small program or payment type. This would result in a much higher level of scrutiny to this small program than what is applied to other services or programs, and would ascribe much more importance to the associated improper payment rate (by terming it a “component” improper payment rate) than a program of this size deserves.

PERM precedence guides combining the very small component and the large component into a single universe in which the former accounts for less than two percent of total expenditures for the state's program. For instance, if the total expenditures associated with the state's only managed care program, PACE, is less than two percent of the total Medicaid expenditure, then PACE would be included in the Medicaid FFS universe. Similarly, if the state's only FFS program for CHIP beneficiaries accounts for less than two percent of the total CHIP expenditures, then this vaccination program would be included in the CHIP managed care universe.

States must bring possible small components to the SC's attention prior to the start of the PERM cycle so that the most appropriate universe for these payments can be identified.

#### ***d. Non-Managed Care Fixed Payments***

Besides managed care capitation payments and FFS claims, Medicaid and CHIP make a variety of other types of payments on behalf of individual beneficiaries that are subject to PERM review. These could include non-risk capitated PMPM payments for programs such as PCCM, disease management, and Non-Emergency Medical Transportation (NEMT). Additionally, payments made to individuals or health plans through HIPP programs, reinsurance or stop-loss payments to MCOs, and drug administration capitations to nursing facilities, are also included in PERM. The PERM sampling universe also includes premium payments made by the states toward Medicare Part A and Part B for dual-eligible beneficiaries. The SC collects these premium payment data from CMS and not from the states.

States need to discuss certain payments, such as special incentive payments to providers, or payments made under an 1115 waiver to non-enrolled beneficiaries, with CMS and the SC to determine if they are appropriate for inclusion in the PERM universe. Although there may be exceptions, these payments are typically included in the FFS universe as "fixed payments."

#### ***e. Aggregate Payments***

While most Medicaid and CHIP payments are made at the beneficiary level, states may also calculate and pay for certain services on behalf of a group of beneficiaries. PERM broadly refers to these as "aggregate payments." Unless otherwise specified by CMS, aggregate payments for services are subject to sampling and review in PERM. These payments are included in the PERM universe regardless of whether the state claims FFP at the medical services match rate or as an allowable administrative cost.

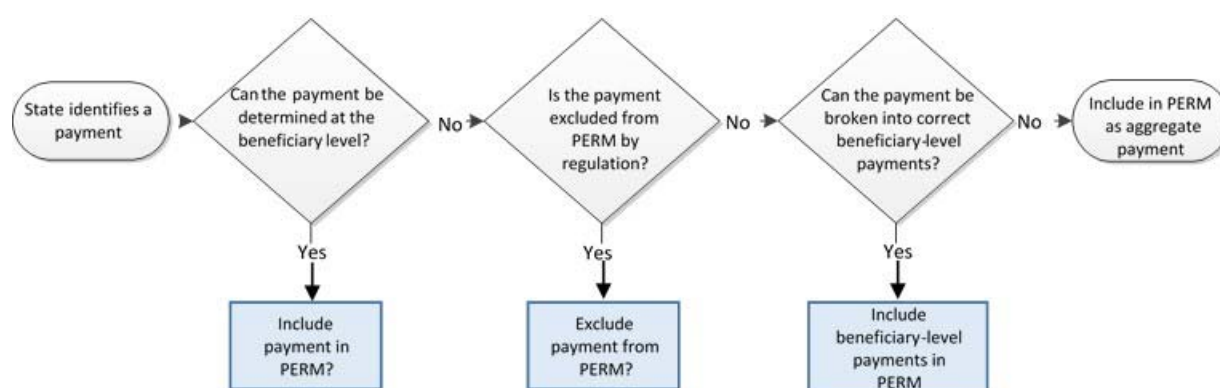
Examples of aggregate payments are reimbursement to counties for NEMT services provided to all Medicaid beneficiaries residing in that county; contractually agreed upon aggregate payments to a broker for provision of transportation services; and fees paid to a case management vendor based on the number of beneficiaries enrolled in the program each month.

In certain cases, states may determine payments at the individual level, but maintain payment records at the aggregate or invoice level. In these cases, CMS and the SC will work with the state to determine how the payment should be submitted and reviewed for PERM. In assessing whether a payment should be submitted as aggregate or at a beneficiary level, the SC determines

if the payment can be attributed to specific beneficiaries. If not, the SC would need to take the payments as aggregate in order to represent the payment at the correct sampling unit level. For example, some states make additional or “bump” payments to providers for Title XIX or Title XXI beneficiaries based on the provider’s location or specialty. In some cases, there is no way to know how much the provider gets paid per each specific beneficiary, as electronic records may only be available at the provider level. Thus, these payments would be submitted at the aggregate payment level. However, if there is information available about the beneficiaries on behalf of which the payments were made, the SC can work with the state to see if beneficiary-level claims can be created.

Aggregate payments lack fundamental consistency as payment methodologies and documentation can vary significantly across states. To assist in handling aggregate payments consistently and appropriately for PERM, CMS developed the following framework displayed in *Exhibit 3*.

**Exhibit 3. PERM Aggregate Payment Framework**



The framework walks through each step of the process used to determine whether a PERM payment should be submitted in aggregate form for inclusion in the universe. Each step has a decision point that requires state input on the payment, its methodology, and its availability. Answers to each question will assist the SC in working with the state on how to address each individual aggregate payment.

States should work with CMS and the SC to determine how payments should be submitted and reviewed for PERM. It is important to note that the definition of aggregate payments continues to evolve for PERM as states continue to develop innovative payment methodologies. CMS, the SC, and the RC will continue to evaluate which payments are considered aggregate payments for PERM. It is possible that an aggregate payment not included for PERM in a past cycle could be determined to be an aggregate payment for inclusion in a future cycle.

#### ***f. Health Reform-related and Other Incentive Payments***

In light of the federal and state-initiated health reform activities, many states have implemented or plan to implement new programs to support efficiency and quality in health care delivery

using Title XIX and/or Title XXI funds. If these payments are calculated at the beneficiary level, they likely are to be included in the PERM universe, even if they are made in aggregate. For example, many states have made retrospective payments to primary care providers to meet the requirements of current law. These payments were often made in aggregate, but were calculated at the beneficiary level and were matched by federal funds, and therefore were subject to sampling and review under PERM.

### C. PERM Exclusions

The PERM sampling universe is guided by the rule that each beneficiary-specific payment matched with Title XIX or Title XXI funds should have one chance, and only one chance, of being sampled. Therefore, it is imperative that each payment is included in the PERM universe only once.

The PERM sampling universes must contain payments that are original, federally matched, and fully adjudicated and approved or denied for payment. This means that adjustments to original payments, state-only payments, and payments not fully adjudicated are excluded from the PERM universes. Further excluded from the PERM universes are encounter records for capitation or other encounter-based payments. By PERM regulation, payments made for solely administrative purposes and certain other types of payments made to providers are excluded from the PERM sampling universes. In this section, these PERM exclusions are described in detail.

#### a. Adjustments

Since each payment is included in the PERM universe once and only once, the routine PERM universe may not have the original payment and adjustments. These claims may be included as part of the PERM+ data submission with the state providing guidance on how the SC can identify and remove them. For consistency across states and programs, PERM sampling universes include only original payments. Therefore, all forms of adjustments, including voids, replacements, and adjusted claims or payments must be excluded from the sampling universe.

As noted earlier, for consistency across states, PERM relies on the original date of payment to determine whether a payment falls within a given cycle measurement. For example, a state being measured in the October 1, 2016, to September 30, 2017, cycle that makes an original payment on September 15, 2016, and voids and replaces the claim on October 2, 2016. In this case, the original payment will not be included in the PERM universe since it falls outside of the measurement year, even though the adjustments took place during the measurement year.

Conversely, if that state makes a payment on September 15, 2017, and subsequently adjusts it on October 2, 2017, the payment must be included in the PERM universe (provided it meets all other criteria for inclusion), since the original payment date falls within the measurement year.

In PERM, the dollar amount in error is the difference between what *was* paid and what *should have been* paid. The original payment amount is used to determine what *was* paid, and is compared to what *should have been* paid. However, if a payment is adjusted within 60 days of the original payment date, the adjusted amount will be used to determine what *was* paid, and will be compared to what *should have been* paid. Adjustments made outside of this 60-day window

will not be considered. When reviewers conduct DP reviews, reviewers will collect and consider all adjustments made within 60 days of the payment date. In the above example, for the claim originally paid on September 15, 2017, PERM will consider the adjustment made on October 2, 2017, for review purposes since it is within the 60-day window.

Commonly, claims adjustments for Medicaid and CHIP are made through individual adjustments and mass adjustments, described below. On rare occasions, the state may have replacement claims as a result of a void-and-replace form of adjustment, which cannot be distinguished from the original payments. The state must bring such instances to the attention of CMS and the SC so that the appropriate inclusion and exclusion strategy may be identified.

### ***Individual Claims Adjustments***

In most cases, the adjusted claims are processed to correct an error. Adjustments to individual claims can be initiated by either the provider or the payer.

- *Provider-initiated individual adjustments:* A provider can submit a request for a claim adjustment for a variety of reasons including, but not limited to, errors in number of units or medical codes billed, incorrect beneficiary information, and incorrect medical/service codes.
- *State-initiated individual adjustments:* States may also adjust claims on an individual basis as a result of claims audit, review, surveillance, etc.

### ***Mass Adjustments***

States, on occasion, make mass adjustments to the payments they previously made to providers. Two of the most common reasons for mass adjustments are:

- *Changes in reimbursement rates to providers:* In some cases, provider fee adjustments become effective prior to the time when the claims payment system can be adjusted to reflect the change in fee schedule. If a state makes a payment according to an old payment schedule after the effective date of the updated payment schedule, either because the effective date was retroactive or because the system changes necessary to make the new payment were not completed by the effective date, this payment, even if outside the 60-day window for adjustments, will not be considered an error in the PERM review.
  - A typical example is when regulations mandate fee increases (or decreases) and the necessary changes to the claims payment system cannot be implemented by the effective date of the fee schedule change. The state typically makes a mass adjustment to the paid claims to ensure that the providers are reimbursed the amount mandated by the updated regulations.
  - Another example includes providers that successfully sue the state for having inadequate fees for certain services, in violation of the Title XIX statutory requirement that payment rates be consistent with economy, efficiency, and quality of services. If the judicial remedy includes retroactive fee increases, the state is obligated to make mass adjustments.



- A final example is rate or benefit changes through State Plan Amendments (SPAs) where the effective date of the SPA is prior to the approval date. States typically make mass adjustments so that the provider reimbursements reflect the changes in policy.
- *Cost-based payment rates:* In many states, certain Medicaid payment rates, such as institutional (hospital and nursing facility), Federally Qualified Health Centers (FQHCs), and Rural Health Centers (RHCs), are cost-based. For these providers, a cost settlement is completed to establish the final cost-based rate. A mass adjustment is then made to account for the difference between the interim and final rates. Similarly to retroactive rate changes, PERM will review the payment based on the pricing schedule on file at the time the payment was made and will not consider it an error if prices are changed retroactively due to cost settlement outside of the 60-day adjustment timeframe.

#### ***b. State-Only Payments***

The PERM universes include only payments matched with Federal Title XIX or Title XXI funds. Payments that do not receive either are identified as state-only for PERM purposes and are excluded from the sampling universes. This is because the PERM program only reviews payments that have federal liability for potential improper payments. The state may have programs for which no federal match is received. The state may also make payments on behalf of certain groups of beneficiaries but receive no federal match. For the latter example, all payments for these beneficiaries are considered as state-only.

#### ***c. Payments Not Fully Adjudicated***

The PERM universes include only claims that have been fully adjudicated. CMS defines a fully adjudicated claim as one that has been reviewed by a person or a system completely and has been approved or denied for payment. Claims that either are in process or are suspended for review are not considered to be fully adjudicated. Rejected claims (e.g., claim batches rejected by a pre-processor) that never made it to the state's adjudication process are also not included in the PERM universes.

States may have certain types of claims where the rejected claims cannot be distinguished from the denied claims. The state must bring these to the attention of CMS and the SC so that the appropriate inclusion and exclusion strategy may be identified.

#### ***d. Administrative Payments***

PERM universes include only claims and payments representing services rendered to individual beneficiaries, or capitation payments purchasing a package of services on behalf of individual beneficiaries. These payments could be matched either at the medical services match rate or as an allowable administrative cost.

PERM universes do not include payments solely made for administrative functions, such as payments to fiscal agents, salaries of state employees, or funding for program outreach. In instances where rates blend administrative and service payments, the entire payment must be

included in the PERM universe.

#### ***e. Payments Excluded by Regulation***

The PERM regulation explicitly excludes specific types of payments from the universes. These typically do not represent payments made on behalf of individuals for services. Regulatory exclusions include:

- Disproportionate Share Hospital (DSH) payments
- Drug rebates
- Grants to state agencies or local health departments
- Graduate Medical Education (GME) payments made as a lump-sum
- Cost-based reconciliations to non-profit providers or FQHCs not tied to individual claims

#### ***f. Encounter Data***

The PERM universes include only true payment records based on which federal match is received. Therefore, encounter data or “shadow claims” are excluded from the PERM universes. For PERM purposes, encounter data are defined as informational-only records submitted to a state by a provider or an MCO for services covered under a managed care capitation or encounter payment. While these are beneficiary-specific, encounter data do not represent actual payments made by the state. Therefore, they are excluded from the PERM universes.

States often collect encounter data to track utilization, assess access to care, and possibly compute risk adjustment factors for at-risk MCOs. States may also require encounter data from FQHCs, RHCs, non-risk PIHPs/PAHPs, and Indian Health Services (HIS) clinics paid at an encounter rate. Further examples of encounter claims include records for state-supplied vaccines and shadow claims for programs paid by Certified Public Expenditure (CPE).

### **D. PERM Data Submission**

CMS requires each PERM state to submit a quarterly universe of all PERM-compliant Medicaid and CHIP payments from which the SC will select samples. In this section, the methods of PERM data submission, documentation, recommended quality checks by the states prior to submission, due dates, and data security are discussed.

#### ***a. Methods***

There are two methods of data submission available to the states – Routine PERM and PERM+. States electing either option must continue to use it throughout the cycle.

##### ***Routine PERM***

The Routine PERM data submission process requires two data submissions from the states. The first data submission contains complete Medicaid and CHIP universes. CMS requires that the



universe data conform to the list of requirements described above to ensure consistency across states. The submission must not include any of the PERM exclusions. This data submission facilitates the SC to create clean universes from which samples can be selected. The second data submission contains detail information for the sampled FFS payments. These sample details are required for MRRs.

Please refer to the CMS PERM website for the Routine PERM Universe and Details Data Submission instructions.

### **PERM+**

PERM+ is a data submission process developed by CMS to simplify PERM for the participating states. Through PERM+, states submit relatively raw quarterly claims, recipient, and provider data. Each state, in conjunction with CMS, decides if data will be submitted via the PERM+ method prior to the SC's Intake Meeting with the state. States must notify CMS by September 15 prior to the PERM cycle being measured if they intend to use PERM+ to submit some or all of their data.

Unlike in Routine PERM, in PERM+, the SC is responsible for developing the universes by removing PERM exclusions with the states' guidance. States submitting under PERM+ do not have to develop the details for sampled claims, since the SC receives all necessary claim, provider, and recipient information with the one data submission and is able to append them to the sampled claims. If the SC has inadequate information for the sampled claims or requires clarification, the states will be contacted as necessary.

Please refer to the CMS PERM website for the PERM+ Data Submission Instructions.

### ***b. Documentation***

Data documentation is a critical component of each PERM submission. Complete documentation saves time by reducing errors, re-work, and questions from the SC to the states. At a minimum, each PERM submission should accompany the following –

- Transmission cover sheet – This document provides information about the files sent to the SC
- Control totals – These totals help the SC ensure that no data have been lost or corrupted during transmission
- Data dictionary – This document provides decode information for state-specific values in the PERM data submission
- File layout – This document lists the fields included in the data submission along with their type, format, and length

### ***c. Claims Data Submission Due Dates***

PERM data submissions are due to the SC 15 days after the end of each quarter as shown in *Exhibit 4*, unless the due date falls on a weekend or federal holiday, in which case the due date is

the next business day. These dates are applicable for both Routine PERM and PERM+ methods of submission.

#### **Exhibit 4. Claims Data Submission Due Dates**

<b>Quarter</b>	<b>Claim Date Paid</b>	<b>Data Submission Due</b>
Quarter 1	October 1 – December 31	January 15
Quarter 2	January 1 – March 31	April 15
Quarter 3	April 1 – June 30	July 15
Quarter 4	July 1 – September 30	October 15

#### ***d. Claims Data Quality Review***

States are required to review the PERM data prior to submission and certify the accuracy and validity of the submission. Thorough data quality review by the states prior to PERM submission saves time by reducing errors, re-work, and questions from the SC. States are urged to compare expenditures represented in the PERM submission with their CMS-64/21 reports to ensure payments that should be included in the PERM submission are included. Refer to the Data Submission Instructions on the CMS PERM website for instructions and guidance on data quality review and on comparing PERM data to CMS Financial Management Reports.

#### ***e. Data Security***

Under PERM, states submit data that contain Protected Health Information (PHI), including electronic Protected Health Information (ePHI), and Personally Identifiable Information (PII). Under HIPAA, CMS, its contractors, and states are all responsible for ensuring the security of PHI and PII that they maintain, transmit, disclose, or dispose. Information security requirements must safeguard against the potential breaches of ePHI and PHI. CMS requires states, its contractors, and other business associates to adhere to federal standards for the adequate encryption of PHI or PII prior to transmission and to ensure that any passwords are sent securely and separately from the transmitted data, regardless of the method of transmission. PHI or PII should never be sent by email.

Under HIPAA, covered entities must ensure the secure transfer of PHI and PII contained in any data transmissions. To meet this requirement, CMS requires all state data transfers containing PHI and PII be encrypted with software that is compliant with the Federal Information Processing Standards (FIPS) 140-2, and validated by the National Institute of Standards and Technology (NIST) module.<sup>3</sup>

The software should also have key management, which allows the state's system administrator to have the authority to unlock all encrypted files from the state's system. This method prevents the necessity of sharing the password with others at the state if the state contact person sending the

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<sup>3</sup> FIPS 140-2 and NIST module can be found at: <http://csrc.nist.gov/groups/STM/cmvp/standards.html>.

data to the contractor is unavailable to provide the key.

In the event of a breach of PHI or PII, CMS requires states, its contractors, and other business associates to adhere to the breach notification rules as mandated under the Health Information Technology for Economic and Clinical Health Act (HITECH), part of the American Recovery and Reinvestment Act (ARRA) of 2009.<sup>4</sup>

The CMS contractors will provide states with instructions on data submission that meet CMS security requirements. If a state requires a Data Use Agreement (DUA) with a PERM contractor prior to submitting data or allowing system access for payment reviews, the draft DUA must be submitted to CMS for review by October 1 at the beginning of the cycle. CMS will forward the DUA to the appropriate contractors for review and approval. The state and the PERM contractors will negotiate the terms of the DUA.

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<sup>4</sup> The HIPAA Breach Notification Rule, released by OCR/HHS, applies to HIPAA covered entities. This rule may be accessed at: <http://www.hhs.gov/ocr/privacy/hipaa/administrative/breachnotificationrule/index.html>. The Health Breach Notification Rule, released by the FTC, applies to non-HIPAA covered entities. This rule may be accessed at: <https://ftc.gov/healthbreach/>

### **III. PERM Sampling Process**

The goal of PERM is to measure and report an unbiased estimate of the true improper payment rates of Medicaid and CHIP. Because it would be impossible to review the accuracy of every Medicaid and CHIP payment, CMS uses a statistically valid methodology to select small samples of payments from the Medicaid and CHIP universes, then extrapolates from the review findings for the samples to estimate the improper payment rate for the program universes.

PERM is designed to fulfill the requirements of IPERIA by calculating Medicaid and CHIP improper payment rates that meet certain precision and confidence requirements. For each state, separate improper payment rates are estimated for Medicaid and CHIP based on a sample of payments. If a state has both FFS and managed care, separate component improper payment rates are estimated, then weighted together according to expenditures.

In this section, we describe PERM sampling units, sampling process (including sample size determination), stratification, and improper payment rate estimation.

#### **A. Sampling Units**

The PERM methodology is based on sampling and review of individual payments from a universe of state Medicaid and CHIP payments (as specified in the previous section) to identify payment errors, from which state and national-level program improper payment rates are extrapolated. Each payment in the PERM universe, including FFS, managed care, or aggregate, is considered an individual “unit” for sampling purposes. Each sampling unit is the smallest level of individually-identifiable payment and, as discussed previously, must have one and only one chance of being sampled. Therefore, it is imperative to ensure that the universe does not have multiple occurrences of a sampling unit.

##### **a. General Sampling Unit Definitions**

For most individual beneficiary-level claims and payments, the sampling unit is a claim, line item, managed care capitation payment, fixed payment, or other individually priced service tied to a single beneficiary. If a state calculates the payment amount for a claim at the line item or “detail” level, the line is the sampling unit. The state must include all of paid (including zero-dollar paid) and denied lines for that claim in the PERM universe. For example, physician claims usually report an individually priced service on each line of a claim (e.g., a claim may have five lines representing five individually priced services). Since the paid amount for each line on the claim is determined independently of the other lines, the state must include each line in the PERM universe.

If the payment amount is calculated at the claim level (e.g., a Diagnosis-Related Group [DRG], per diem, or encounter-based payment), the sampling unit is the header record containing only the claim-level information. A hospital claim that pays on a DRG basis may include 20 additional revenue lines, but the paid amount for all of the services are calculated based on the DRG reported on the header. In this case, only one record representing the header-level payment for the DRG should be in the PERM sampling universe. The 20 lines on the claim are informational details because they are not priced separately and, therefore, are not considered

sampling units.

#### ***b. Claim-specific Exceptions***

States may need to identify claim-specific exceptions to payment-level rules. For example, out-of-state hospitals are excluded from the DRG methodology and each claim detail is paid on a percent-of-charges basis. In this case, the out-of-state hospital inpatient claims would be included in the PERM universe at the line level even though all other hospital inpatient claims are included at the header level. Other claim/provider types where there are often exceptions to the general header/detail payment rules include Medicare crossover claims; claims from FQHCs, RHCs, and HIS clinics; and claims from state-owned facilities.

TPL and beneficiary cost-sharing (co-payment and coinsurance) may also affect the level at which a PERM sampling unit is determined. If, for a claim paid at the detail or line level, TPL or beneficiary cost-sharing is deducted from the overall claim's allowed charge, the particular claim with TPL must be included in the PERM universe at the header level. This is because the sum of the details payment amount is not equal to the amount reimbursed by the state. In this example, the claim would be included in the PERM universe as a header-level sampling unit to reflect the total computable amount for the claim.

For aggregate payments, the sampling unit for PERM is generally the lowest level for which a payment entry (record, invoice, or claim that the state uses to determine the payment amount) is available electronically. CMS, the SC, the RC, and the state may need to work together to determine the appropriate sampling unit for aggregate payments and the appropriate review methodologies.

### **B. Claims Sampling Process**

IPERIA requires an estimated national improper payment rate bound by a 90 percent confidence interval of 2.5 percentage points in either direction of the estimate. That is, the sample must be large enough that, given standard statistical assumptions, one can be 90 percent confident that the improper payment rate for the sample is within plus or minus 2.5 percentage points of the true improper payment rate for the universe. Selecting a larger sample size can increase the confidence that the sample improper payment rate is closer to the universe improper payment rate and/or decrease the size of the range around the estimate. CMS has chosen, as an additional goal for PERM (although not required by IPERIA), to draw samples at the state level that allow an estimated state improper payment rate with a 95 percent confidence interval of 3 percentage points in either direction.

Although separate samples are drawn for Medicaid and CHIP, the procedures for sampling are the same for both programs. This section distinguishes between Medicaid and CHIP only when differences occur.

#### ***a. Sample Size for Claims and Capitation Payments***

For FFS claims and capitation payments, the state-level PERM sample size is the number of sampling units determined necessary to calculate an estimated improper payment rate for a state

bound by a 95 percent confidence interval of three percentage points in either direction.

As previously noted, on February 4, 2009, CHIPRA (Pub. L. 111-3) was enacted. Section 601(f) of the CHIPRA required CMS to establish state-specific sample sizes for application of the PERM requirements with respect to CHIP for FYs beginning with the first FY that started on or after the date on which the final rule was in effect for all states, on the basis of such information as the Secretary determines appropriate. In establishing such sample sizes, the Secretary shall, to the greatest extent practicable: (1) minimize the administrative cost burden on states under Medicaid and CHIP; and (2) maintain state flexibility to manage such programs.

CMS published the final PERM rule on August 11, 2010 (75 FR 48815), and the state-specific sample size provision went into effect with the FY 2011 PERM cycle.

The final rule established state-specific sample sizes for PERM, although the execution of these responsibilities remains with CMS and the federal contractors, not with the states. Under the Secretary's authority at section 1102(a) of the Act, CMS applied these sampling procedures to both Medicaid and CHIP to effectively implement IPERIA.

In addition, CMS established a maximum sample size of 1,000 claims for each component. Because reviewing claims requires both staff and monetary resources, a maximum sample size puts a limit on expenditures. Statistical tests suggest that if state-level precision cannot be met with a sample size of 1,000 claims, it is unlikely to be met with any reasonable sample size; however, a substantial increase in the probability of reaching precision goals can be gained by increasing the sample size from 500 to 1,000.

The SC estimates state-specific sample sizes for each program component within each state based on the prior cycle's improper payment rate and whether the precision requirement was met in the prior cycle. The state-specific sample size must be sufficient to meet the precision requirements, which is to estimate the component improper payment rate with a 95 percent confidence interval of three percentage points in either direction.

#### ***b. Fee-For-Service Stratification***

A dollar-based stratification approach is used for the FFS sample. Each program area is divided into strata based on payment amounts. For FY 2017, 10 dollar-weighted strata are used for FFS sampling. The total payments in the universe are divided by the number of strata and an equal proportion of payments are included in each stratum. Therefore, each stratum for FFS sampling includes 10 percent of the dollars in the universe. Payments are sorted and applied to each stratum, so that a small number of high-dollar payments are placed in the first stratum and a large number of very small payments are placed in the last stratum.

In addition to the ten payment-based strata, there is a stratum consisting of fixed payments, aggregate payments, Medicare premium payments, and Medicare crossover claims. The number of lines sampled from this stratum depends on the size of the stratum in comparison to the rest of the universe. There is a cap on the number of claims that can be sampled from this stratum (no more than 10% of the total state sample). There is also a stratum for claims that are zero-dollar paid or denials. Two samples are selected from this stratum.

Below, an example of dollar-weighted stratification is summarized. For the sake of simplicity, the following example assumes five dollar-weighted strata. This is consistent with the methodology applied for 10 dollar-weighted strata. If five strata were used, each stratum would contain 20 percent of total payments, but if 10 strata were used, each stratum would contain 10 percent of total payments. The following example assumes five strata.

**Step 1:** The total amount of all payments is divided by five to determine the dollars that need to be allocated into each stratum (20 percent of expenditures).

**Step 2:** All lines are sorted from largest to smallest payment amounts.

**Step 3:** Lines are selected in descending order until there are sufficient lines, added together, to represent 20 percent of total payments. This is the first stratum.

**Step 4:** The second stratum consists of the next largest lines that represent 20 percent of total payments.

**Step 5:** This sequence is repeated until all five strata are constructed.

**Step 6:** An equal number of lines are then sampled from each of the strata (e.g., if the sample size is 250, then 50 lines are sampled from each stratum).

Note that the first stratum will have the fewest number of lines (the lines in the first stratum are the highest-dollar lines, so it takes fewer of them to add up to 20 percent of expenditures), while the last stratum will have a very large number of lines. Therefore, this strategy has the additional implication that the sampling frequency in the first stratum, with the high dollar-valued line items, will be greater than the sampling frequency on the last stratum, where very low dollar-line items are included. Explained another way, higher-dollar claims have a greater chance of being sampled, as demonstrated in *Exhibit 5*.

**Exhibit 5. Stratification by Expenditures – Five Strata Example**

	Stratum 1 (Largest claims)	Stratum 2	Stratum 3	Stratum 4	Stratum 5 (Smallest)	Strata All
<b>Number of lines</b>	18,965	25,099	29,841	83,412	359,476	516,793
<b>Percent of total</b>	4%	5%	6%	16%	70%	100%
<b>Total amount paid</b>	\$4,696,625	\$4,696,748	\$4,696,679	\$4,696,770	\$4,696,719	\$23,483,540
<b>Percent of total</b>	20%	20%	20%	20%	20%	100%
<b>Sample distribution</b>	50	50	50	50	50	250
<b>Sampling frequency</b>	50/18,965 or 1 out of every 379	50/25,099 or 1 out of every 502	50/29,841 or 1 out of every 597	50/83,412 or 1 out of every 1,668	50/359,476 or 1 out of every 7,190	N/A



### ***c. Managed Care Claims Payment Stratification***

The same dollar-based stratification approach is also used for the managed care sample. For FY 2011 and later years, 10 dollar-weighted strata are used for managed care sampling. There are no additional strata in managed care. Denials are rare in managed care programs, but do occur in some states. Denials have a zero dollar amount and therefore will appear in the stratum with the smallest dollar values.

### ***d. Sample Selection Process***

The general process used to select a sample is summarized in the following steps.

**Step 1:** Define necessary strata according to the sampling methodology specific to the program and component and sort all lines into the appropriate stratum.

**Step 2:** Sort all lines in each stratum first by paid amount and then by a random number (the random number is used to order payments with the same dollar amounts).

**Step 3:** Determine the skip factor for each stratum ( $k_i$ ). Let  $N_i$  be the number of payments in the universe for the  $i^{th}$  stratum and  $n_i$  be the number of payments in the sample for the  $i^{th}$  stratum.

$$k_i = \frac{N_i}{n_i}$$

**Step 4:** Determine a random start value for each stratum ( $start_i$ ) such that  $1 \leq start_i \leq k_i$ .

**Step 5:** Sample every  $k_i^{th}$  item within the  $i^{th}$  stratum.

### ***e. Modifications to the Sampling Process***

The previous section provides the sampling procedure when the universe information is accurate. In practice, problems with the universe data due to a myriad of reasons are often discovered after a sample has been selected and review is under way. Although, ideally, that sample should be dropped from review and a new sample should be selected from the corrected universe, in the interest of time and burden of the RC and the state, selecting a replacement sample may not be feasible. In such situations, the following steps are taken to correct the sample.

**Step 1:** A correct universe is created using updated data provided by the state.

**Step 2:** Sample sizes needed for each stratum are recalculated from the corrected universe.

**Step 3:** All lines in the original sample that exist in the corrected universe are retained in the corrected sample, if it is possible to do so while preserving a valid sample.

**Step 4:** Additional sampling, to eliminate any difference between the new required sample size



for each stratum and the valid portion of the original sample, is taken from the corrected universe.

**Step 5:** Before sampling, all claims from the original sample are withdrawn from the corrected universe and accurate sampling frequencies are calculated.

**Step 6:** The sampling procedure described in the previous section is applied to the additional sampling from the corrected universe.

Following these steps ensures the randomness of the sample within each stratum and that accurate sampling frequencies can be calculated so that the population inferences remain unbiased. There might be cases where this process results in more than the required number of lines in a stratum due to the reallocation of the sample prescribed by the corrected universe file.

#### **IV. State Policy Collection Process**

The RC is responsible for acquiring Medicaid and/or CHIP policies for each state selected for review for the PERM cycle. The RC collects and stores the state policies and federal regulations in the State Medicaid Error Rate Findings (SMERF) system for claims under review during the PERM review cycle. Policies used in the PERM review may include:

- Rules/regulations
- Manuals/handbooks
- Bulletins/updates/notices
- Clarifications/reminders
- Fee schedules/codes
- SPAs [as relevant and approved by the Centers for Medicaid and CHIP Services (CMCS)]

The RC contacts each state at the beginning of each PERM review cycle. The RC begins the policy collection process by researching state website(s) for all available state policy documents that contain Medicaid and/or CHIP policies relevant to DP and MR reviews, and downloads these from state websites. The RC compiles an (MPL of all policies pertinent to the reviews for each state. After it completes the MPL, the RC sends the MPL to the state for confirmation and approval. The state may provide additional resources that may not be available publicly. Once the state approves the MPL, the RC saves the document in the SMERF system under the policy tab. The RC continues to monitor and collect state policies throughout the FY, validating the list with the state as appropriate.

## **V. Medical Record Request Process**

The RC is responsible for requesting all medical record documentation associated with the randomly selected Medicaid FFS and CHIP FFS claims. The RC submits the requests directly to the provider's medical record location as verified by the provider. Providers must submit the medical record documentation within 75 days from the date of the letter. The RC will send up to four follow-up letters and make up to four phone calls to each provider during this 75-day window as needed to secure the provider's compliance with open documentation requests. The states can use SMERF to track MRRs and a SMERF user guide is available on the SMERF homepage.

### **A. Provider Contact Validation**

By referencing sampled claims, the RC first verifies the provider information by contacting either the performing provider or the billing provider by phone, using contact information that the state provides. The RC provides information on the patient, Date Of Service (DOS), and type of service and notifies the provider that a written request is forthcoming. The RC verifies the provider's name and phone number, as well as the name and mailing address of the person or entity that processes requests for medical records related to the provider's patients. The RC also determines the preferred method for the request (fax or first class mail). If the RC is unable to verify the provider information on the state's claim files after using other means (e.g., internet, directory assistance), the RC will contact the state to obtain more current provider information.

### **B. Initial Medical Record Request**

If the provider prefers to receive record requests via fax, the RC will fax its Initial Request for Records to the designated fax number within one hour of designation or as reasonable during high-volume times and resource constraints. If the provider prefers to receive record requests via mail, the RC will send its Initial Request for Records to the point-of-contact at the confirmed address via standard United States Postal Service (USPS) first class delivery within one business day of the telephone contact.

The Initial Request for Records includes a brief introduction to PERM and contact information for RC representatives working to collect medical records. The Initial Request includes language informing the provider that the SC randomly selected a claim submitted by, or on behalf of, the provider for PERM review, and indicates that the state may seek recoveries for that claim if the provider does not submit the requested medical records to the RC in a timely manner. The letter describes CMS' authority to collect medical records under the Act and confirms that CMS and its contractors will comply with the Privacy Act and the regulations at 45 CFR parts 160 and 164. The letter also specifically includes language explaining that the release of medical records and patient information to the RC is not a violation of HIPAA standards. The RC customer service representative's telephone number and the provider's state Medicaid representative's telephone number are included if the provider requires additional information or has questions.

The Initial Request for Records includes a claim summary with details for the provider to identify the appropriate record, such as:

- The patient's name
- DOS
- Diagnostic code [International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM)]
- Service code [Current Procedural Terminology (CPT), Healthcare Common Procedure Coding System (HCPCS) or prescription number]
- Total amount of claim or total amount for service

The Initial Request for Records package also includes a PERM Fax Cover Sheet that describes the specific documentation being requested (a request list is attached to the Initial Request letter) and asks that the provider send the RC all medical documentation pertaining to the specific service rendered. Prior to sending the initial record request, the RC assigns each claim to a specific claim category. Each claim category has its own list of unique, but standard documentation (e.g., history and physical, plan of care, physicians' orders, etc.) that is typically required to support claims assigned to each respective category. Finally, the letter indicates that the provider has 75 calendar days from the issue date of the letter to provide the requested medical record(s) to the RC. The last enclosure of the package includes instructions for providers' submission of medical records to the RC. Providers submit records to the RC via the USPS, a toll free fax number, CD, or electronic submission of Medical Documentation (esMD). For more information about esMD, see [www.cms.gov/esMD](http://www.cms.gov/esMD). New for FY 2017, providers can also send documents in encrypted secure emails to [Records@permrc.com](mailto:Records@permrc.com) or send an encrypted file to [Records@permrc.com](mailto:Records@permrc.com) and contact PERM Customer Service Representatives at 301-987-1100 to provide the file encryption password.

### **C. Follow-up Medical Record Requests**

The RC contacts each provider that has not submitted the requested records by telephone. The RC will make up to three follow-up calls at 30, 45, and 60 calendar days from the Initial Request and will send up to three follow-up letters that remind the provider of the date on which the 75-day clock will expire.

If the provider does not submit the requested information by the deadline, the RC sends a final letter that contains the detailed request information. The letter also informs the provider that his or her failure to submit the requested medical records resulted in a PERM error and that the RC will notify state officials of the error, possibly causing the state to seek recoveries for the claims related to those absent medical records.

### **D. Follow-up for Incomplete Documentation**

The RC will process additional documentation requests when the RC receives incomplete documentation from the provider. Once a medical reviewer identifies that the documentation for a specific service is incomplete, he or she will note specifically what documentation is necessary to complete the review and the RC will contact the provider by phone and send a letter to request the additional documentation. If the RC does not receive the additional documentation requested within seven calendar days from the provider, the RC makes a reminder call to the provider and

sends a reminder letter. If the RC does not receive the additional documentation from the provider within 14 calendar days, the RC will count it as a Document(s) Absent from the Record (MR2) error.

If the provider does not submit the requested information by the deadline, the RC sends a final letter that contains the detailed information request. The letter also informs the provider that his or her failure to submit the requested medical records resulted in a PERM error and that the RC will notify state officials of the error, possibly causing the state to seek recoveries for the claims related to those absent medical records.

If the provider responds to the additional documentation request but the submission is still incomplete, the RC will inform the provider via telephone that the documentation remains incomplete and will follow up with a corresponding letter identifying the specific document(s) the record still lacks.

### **E. Late Documentation Policy**

In cases where the RC receives no documentation from the provider after 75 days have passed since the Initial Request, the RC considers the case to be a No Documentation (MR1) error. The RC will consider any documentation received after the 75<sup>th</sup> day to be “late documentation.”

If the RC determines that the documentation the provider submits is not complete enough to determine whether the state correctly paid the claim, it will request additional documentation from the provider. Providers have 14 calendar days to submit the additional documentation to the RC. The RC will also consider additional documentation received after the 15<sup>th</sup> day “late documentation.”

If the RC receives “late documentation” before the cycle cutoff date (generally the second July 15 of a measurement cycle), for improper payment rate calculation and reporting purposes, it will review the records and, if justified, revise the error finding.

If the RC receives “late documentation” after the cycle cutoff date (generally the second July 15 of a measurement cycle), the RC will review the documentation under continued processing only if the request qualifies for continued processing (still within the 75-day timeframe for original requests or within the 14-day timeframe for additional documentation requests).

### **F. Policy for Handling Lost or Destroyed Documentation**

The PERM measurement involves reviewing medical documentation in support of paid FFS claims in both the Medicaid program and CHIP. The RC contacts providers and asks them to submit documentation for review of their claims. A provider may be unable to provide documentation due to its loss or destruction from a natural disaster such as a flood, hurricane, earthquake or tornado, and in cases of destruction by fire. In the event of a Federal Emergency Management Agency (FEMA) declared disaster, the SC will drop the claim from the sample, and replace the claim with another randomly sampled claim if time allows. The RC will make determinations in the event of a fire on a case-by-case basis.

#### ***a. Provider Attestation***

The PERM RC sends requests for medical records/documentation to a provider to complete an MR. If a provider is unable to supply the documentation due to loss or destruction from a disaster, the provider should submit an attestation statement using any of the information submission methods described in Section V(B) of this document to the RC within 75 days of the date of the initial written request for documentation from the RC.

#### ***b. Re-Sampling or Excluding Claims***

In the event that a provider's documentation has been lost or destroyed in a FEMA declared disaster, the SC will replace the sampled claim with another randomly sampled claim from that state's universe for the PERM review. In the event re-sampling is no longer possible due to timeline constraints, the SC will discard the claim(s) from the sample.

### **G. Policy for Providers under Fraud Investigation**

For claims selected in the PERM sample in which the provider listed is under fraud investigation, the state may notify the RC that the record for a specific provider is not available due to the investigations and the RC will stop all requests for associated records in the sample. PERM does not drop these types of claims from the sample. IPIA requires federal agencies to measure "improper payments" and does not distinguish between different types of improper payments (for example, unintentional errors versus fraud). Since the provider cannot submit the record for review, the RC will find a No Documentation Error (MR1) and will report the claim as an error in the final findings.

## VI. Data Processing Reviews

A DP error is an error resulting in an overpayment or underpayment that is determined from the claim information and other information in state payment and eligibility systems, state regulations or policies, federal regulation (exclusive of medical records), and HIPAA 5010 standards. The DP error finding does not require clinical judgment or detailed analysis of beneficiary eligibility criteria.

The difference in payment between what the state paid (as adjusted within improper payment measurement guidelines) and what the state should have paid, in accordance with the state's documented policies, is the dollar measure of the payment error.

DP errors include, but are not limited to the following:

- Payment for duplicate items
- Payment for non-covered services
- Payment of FFS claims for managed care services
- Payment for services that should have been paid by a third party but were inappropriately paid by Medicaid or CHIP
- Pricing errors
- Logic edit errors
- Data entry errors
- Managed care rate cell errors
- Managed care payment errors
- Provider information/enrollment errors
- Submission timeliness errors
- Administrative errors

All FFS and managed care claims are subject to DP review. For FFS claims sampled at the header level, the DP review includes examining all line items in each claim to validate the state processed it correctly. For FFS claims sampled at the line level, the DP review includes examining the payment for the line the SC sampled. DP reviews for managed care payments examine whether the state accurately processed the sampled capitation payments.

Before DP reviews commence, the RC asks the state for copies of all DP manuals, system navigational tools, and pricing guides. The RC may gather supplemental DP review tools during the on-site review or during remote reviews as it identifies additional needs or processing exceptions.

## **A. FFS Data Processing Review Components**

The RC reviews the following elements during DP reviews of FFS claims.

### ***a. Verification of Beneficiary Information***

To determine that the beneficiary was eligible for payment of the services under review, the RC reviews the following beneficiary information:

- Date of birth/age
- Date of death
- Citizenship status
- City/zip code if needed to determine managed care status
- County of residence
- Gender
- Beneficiary ID
- Living arrangements (home, institution, group home, other)
- Patient liability
- Patient level of care, if applicable
- Program eligibility (aid category/benefit plan) and effective dates (relative to DOS) reflected in both the MMIS and the state eligibility source system
- Beneficiary residency or population requirement for enrolling in a managed care plan, or living in a mandatory managed care geographical area

### ***b. Verification of Third-Party Liability (TPL) Payment Information***

The RC reviews TPL and Medicare information to determine whether another benefit source was available for the service, and if so, whether the state considered the benefit in accordance with the state's TPL policy (cost avoidance, pay and chase). TPL information review includes:

- Medicare eligibility – Parts, A, B, and D with dates of eligibility
- Other TPL information including coverage dates and covered services

### ***c. Verification of Provider Eligibility***

In order to verify that the provider(s) (including billing, attending/servicing, and ordering/referring providers) were registered and eligible to provide and bill for the services under review, the RC reviews the following provider information:

- Provider name
- Provider NPI



- Provider registration/enrollment
- Provider license, if required
- CLIA certification, if required
- Provider type and specialty
- Provider and service location
- Provider sanction/suspension periods, including verifying a provider is not listed on the OIG List of Excluded Individuals/Entities (LEIE)
- State compliance with risk-based screening for all providers, where required
- Finger-printing and criminal background checks for high-risk providers after July 1, 2018

#### ***d. Verification of Accurate Claim Payment***

To determine that the payment for a covered service was accurately calculated and paid, the RC reviews the following elements:

- Claim filing date and filing timelines applicable to that claim/provider type
- Compliance with HIPAA 5010 transaction standards
- If the state's system used ICD-10-CM codes for claims with DOS on or after October 1, 2015
- If the service was covered by the program (Medicaid or CHIP) that paid the claim
- If the service required prior authorization for payment of the claim
- Proper payment amount based on fee schedule or other reimbursement methodology in effect for the DOS
- Duplicate payment history
- Adjustments to the sampled claim

Note that in order to complete these aspects of the review, the reviewer may need access to screens containing information on National Drug Codes (NDCs), revenue codes, procedure codes, payment rates, and pricing schedules (e.g., DRG, per diem, max fee, provider-specific), for all types of claims. The reviewer may need to access rates for older DOS. If the state makes retroactive rate adjustments, the reviewer must access the rates that were in effect for the DOS on the date that the claim under review was paid. Information about how the state calculates each type of payment may be required. If the state processes payments for “sister agencies” that receive pass-through FFP at the federal match rate (e.g., Medicaid in public schools, mental health), this information must be identified so the reviewer can accurately determine pricing. The reviewer may need access to other claims in the system to conduct a check for duplicates. If the provider filed a hard copy claim, access to the scanned image of the claim, as well as the system information, is required. Finally, the reviewer may need access to tables that explain codes used in the system (if this is not contained in the system help).

## **B. Basic Managed Care Data Processing Review Components**

### ***a. Verification of Beneficiary Information***

In order for the RC to determine that the beneficiary was eligible for payment of the services under review, the RC reviews the following beneficiary information:

- Date of birth/age
- Date of death
- Citizenship status
- City/zip code (if needed to determine managed care status)
- County of residence
- Gender
- Beneficiary ID
- Living arrangements (home, institution, group home, other)
- Program eligibility (aid category/benefit plan) and effective dates (relative to DOS) reflected in both the MMIS and the state eligibility source system
- Beneficiary residency or population requirement for enrolling in a managed care plan, or living in a mandatory managed care geographical area

### ***b. Health Plan Contracts***

To establish that the capitation paid was correct, the RC reviews the terms of the health plan contract to determine the following:

- Capitation rates in effect for coverage month
- Partial month coverage/recoupment policy
- Population and service carve-outs
- Geographic service areas covered by each plan under contract
- Other contract terms that could affect proper payment

### ***c. Correct Payment***

The RC determines whether the beneficiary was in the correct rate cell based on state policies, the health plan contract and whether the state made proper payment based on that rate cell.

### ***d. Other***

The RC checks for duplicate payments made for the same beneficiary for the same month and documents any adjustments made within 60 days of the sampled payment date.

### C. Data Processing Error Codes

**DP1 – Duplicate Claim Error:** The sampled line item/claim or capitation payment is an exact duplicate of another line item/claim or capitation payment that was previously paid. Services on a sampled claim may also conflict with services on another claim during the same DOS.

**DP2 – Non-Covered Service/Beneficiary Error:** The state’s policy indicates that the service billed on the sampled claim is not payable by the Medicaid program or CHIP and/or the beneficiary is ineligible for the coverage category for the service.

**DP3 – FFS Payment for a Managed Care Service Error:** The beneficiary is enrolled in an MCO that includes the service on the sampled claim under capitated benefits, but the state inappropriately paid for the sampled service.

**DP4 – Third-Party Liability Error:** Medicaid/CHIP paid the service on the sampled claim as the primary payer, but a third-party carrier should have paid for the service.

**DP5 – Pricing Error:** The payment for the service does not correspond with the pricing schedule on file and in effect for the DOS on the claim.

**DP6 – System Logic Edit Error:** The system did not contain the edit that was necessary to properly administer state policy, or the system edit was in place but was not working correctly and the sampled line item/claim was paid inappropriately.

**DP7 – Data Entry Error:** The sampled line item/claim was paid in error due to clerical errors in the data entry of the claim.

**DP8 – Managed Care Rate Cell Error:** The beneficiary was enrolled in managed care on the sampled DOS and assigned to an incorrect rate cell, resulting in payment made according to the wrong rate cell.

**DP9 – Managed Care Payment Error:** The beneficiary was enrolled in managed care and assigned to the correct rate cell, but the amount paid for that rate cell was incorrect.

**DP10 – Provider Information/Enrollment Error:** The provider was not enrolled in Medicaid/CHIP according to federal regulations and state policy or required provider information was missing from the sampled claim.

**DP11 – Claims Filed Untimely Error:** The sampled claim was not filed in accordance with the timely filing requirements defined by state policy.

**DP12 – Administrative/Other Error:** A payment error was discovered during DP review, but the error was not a DP1 – DP11 error.

**DTD – Data Processing Technical Deficiency:** The RC discovered a deficiency during a DP review that did not result in a payment error.

## VII. Medical Reviews

The RC reviews the following items as part of its MR responsibilities:

- The provider's medical record or other documentation supporting the service(s) claimed
- Code of Federal Regulations (CFR) provisions that apply to conditions of payment
- The state's written policies

After examining these materials, the RC's medical reviewers compare the information presented on the claim with the documentation, applicable regulations, and written policies to determine whether the state correctly paid the claim.

MR errors can result in both overpayments and underpayments. The dollar measure of the payment error is the difference between what the state paid (as adjusted within improper payment measurement guidelines) and what the state should have paid, based on 42 CFR Sections 440 to 484.55 and the state's documented policies.

MR error findings include, but are not limited to the following:

- No Documentation (MR1) error
- Document(s) Absent from Record (MR2) error
- Procedure Code (MR3) error
- Diagnosis Code/DRG (MR4) error
- Unbundling (MR5) error
- Number of Units (MR6) error
- Medically Unnecessary Service (MR7) error
- Policy Violation (MR8) error
- Improperly Completed Documentation (MR9) error
- Administrative/Other (MR10) error
- Medical Technical Deficiency (MTD)

The RC conducts MR on all sampled FFS claims, with the exception of Medicare Part A and Part B premiums, PCCM payments, aggregate payments, other PERM fixed payments, denied claims, and zero-paid claims. MR may be required for denied claims if the state denied the claim for medical necessity or for other reasons verifiable only through MR. The MR is exclusive of the DP review. States can track MR findings using SMERF.

## **A. Basic Medical Review Components**

The purpose of MR is to determine if the state paid each sampled claim correctly. The RC makes this determination based on information in the medical record and the paid claim. Although in most cases the RC will review individual line items, it may be necessary to review all items on a claim in order to determine the accuracy of the individual line (reviewers will not record errors associated with lines on a claim that were not part of the sample).

The mechanics of the MR (e.g., requested documentation, reviewed policies) vary by service type. In general, review procedures will map closely to the PERM claim categories, although in some cases (e.g., denied claims), specific review procedures may be required. See the PERM claim categories for MR below.

### **Claim Category 1: Inpatient Hospital Services**

- Acute inpatient
- Long-term acute
- Acute inpatient rehabilitation

### **Claim Category 2: Psychiatric, Mental and Behavioral Health**

- Inpatient and outpatient psychological, psychiatric and behavioral health services
- Drug and alcohol inpatient and outpatient services
- Group homes

### **Claim Category 3: Nursing Facility, Chronic Care Services, or ICFs**

- Nursing home and convalescent centers
- Chronic care

### **Claim Category 4: ICFs for Individuals with Intellectual Disabilities (ICF/IID) and ICF/Group Homes**

### **Claim Category 5: Clinic Services**

- Hospital-based clinics
- FQHCs
- HIS
- RHCs

### **Claim Category 6: Physicians and Other Licensed Practitioners Services (includes: Advanced Practice Nurse, Physician Assistant, Nurse Midwife and Midwife)**

### **Claim Category 7: Dental and Oral Surgery Services**

**Claim Category 8: Prescribed Drugs**

**Claim Category 9: Home Health Services**

- Home health agency services and medical supplies
- Equipment and appliances through the agency

**Claim Category 10: Personal Support Services**

- Personal care services (qualified service provider, personal care attendant, aide, homemaker services, and respite care)
- Case management/target case management services
- Private duty nursing
- Meal delivery services

**Claim Category 11: Hospice Services**

- Services provided at home or in a nursing facility, hospital, or hospice facility

**Claim Category 12: Physical, Occupational, Respiratory Therapies, Speech Language Pathology, Audiology, and Rehabilitation Services, Ophthalmology, Optometry, and Optical Services Necessary Supplies and Equipment**

**Claim Category 13: Day Habilitation, Adult Day Care, Foster Care, or Waiver Programs and School-Based Services**

**Claim Category 14: Laboratory, X-Ray, and Imaging Services**

**Claim Category 15: Outpatient Hospital Services**

- Outpatient services
- Emergency services

**Claim Category 16: Durable Medical Equipment (DME) and Supplies, Prosthetic/Orthopedic Devices, and Environmental Modifications**

**Claim Category 17: Transportation and Accommodations**

**Claim Category 99: Unknown**

The following claim categories do not require MR:

**Claim Category 18: Denied Claims**

**Claim Category 19: Crossover Claims**

**Claim Category 30: Capitated Care/Fixed Payments**

- Fixed payments for PCCM
- Medicare Part A premiums
- Medicare Part B premiums
- HIPA
- Aggregate payments

**Claim Category 50: Managed Care**

- Capitated payments to HMO, HIO, or PACE Plan
- Capitated payments to Prepaid Health Plans (PHPs)

**B. Process for Conducting the Medical Review**

The RC conducts a comprehensive MR on each sampled unit (full claim or line item) for which it receives medical records. This includes reviewing medical record documentation, federal regulations and state-specific guidelines and policies related to the claim to determine whether the service was medically necessary, reasonable, provided in the appropriate setting, billed correctly, and coded accurately.

All FFS claims sampled for review have a nurse review for medical necessity, reasonableness and to determine if the provider provided care in the appropriate setting. Most FFS claims also have an independent coding review to validate coding accuracy and the number of units billed. The RC excludes certain claim categories from a coding review when the payment is not based on procedure codes or DRG payments. These excluded categories include nursing facilities, ICF payments, and pharmacy claims. Nurse reviewers validate NDC codes for pharmacy claims.

The RC reviews claims for medical errors using the PERM review process according to state-specific policies (e.g., if a certain aspect of the recommended review process outlined does not apply in a given state, reviewers do not need to follow that aspect when reviewing that state's claims). The reviewer is responsible for using all applicable documents, references, medical necessity guidelines, and his or her clinical review judgment to determine if the service was medically necessary and paid according to required policies.

**a. Verification of Documentation Sufficiency**

For the RC to determine whether it received appropriate and sufficient documentation, it evaluates the following information:

- Did it receive all documentation to demonstrate the provider billed for the service in accordance with state policy requirements?
- Does the documentation support the requested sampling unit?
- Does the documentation support the DOS?
- Does the documentation include signed physician orders?
- Does the documentation include approved certifications/re-certifications required by

state policy?

The original MRR lists the specific supporting documentation that providers should send for each claim category.

***b. Verification of Service Provision in Accordance with State Policy***

The policy review includes review of the applicable state-specific Medicaid or CHIP policy related to the service on the claim. The procedure or service documented in the medical record is reviewed to determine if the service was covered under the state's policy; if there were any applicable limitations (e.g., units, quantities); and if the provider's service fell within those limitations. Source documentation for the review will include documented state policies, **including non-covered benefit limitations, provider manuals, and the CFR.**

***c. Confirmation of Medical Necessity of Service***

The medical necessity review includes review of the record to determine if the service provided was consistent with the symptoms or diagnosis under treatment. In addition, the review may also involve a contextual claim review of other services provided to determine the pattern and feasibility of the sampled service. This may include an entire MR to determine if the sampled service was medically necessary.

Source documentation includes documented state policies, including medical necessity documentation guidelines the state used, provider manuals, and the CFR.

***d. Determination that the Service Rendered Matches the Service Codes Billed and Paid***

The coding validation involves confirming the diagnosis recorded by the provider and its relevance to the billed procedure code. The coding review includes reading the medical record documentation and applying applicable coding guidelines to ensure the code the provider billed and the payer paid is the most appropriate code and level of code for the service rendered and that the provider did not assign multiple codes when only one code is appropriate (unbundling). The RC does not perform coding reviews for the long-term care and prescribed drugs claim categories.

For the RC to determine whether it received appropriate and sufficient documentation, it evaluates the following information:

- Is the medical record documentation consistent with the code billed by the provider?
- Are the procedure codes unbundled?
- Is the billed code consistent with the provider's diagnosis?
- Is the diagnosis code appropriate (if relevant to payment)?
- Is the diagnosis included in the DRG (if relevant to payment)?
- Would another procedure code be more appropriate?



#### ***e. Verification of Appropriate Physician Certification***

For long-term care, inpatient hospital services, and home health care, the review verifies the documentation contained a signed physician certification, if required by state policy.

### **C. Special Rules for Medical Review**

#### ***a. Underpayments***

If reviewers note a discrepancy between the number of units billed and the number of units provided, they should verify whether there was a written state policy in effect when the state made payment that limited reimbursement to a certain maximum allowable amount. If such a policy was in effect at that time, reviewers cite the claim as an error.

#### ***b. Date of Service***

The RC cites a claim with incorrect DOS as an MTD if all of the following apply:

- If all the other details of the claim are correct (the medical record matches the claims details)
- If the DOS does not deviate by more than seven calendar days (the medical record shows the DOS is no more than seven calendar days before or after the billed DOS)
- The medical record supports the charges billed
- For per diem hospital claims, the record reflects the same number of days the provider billed and rate schedules remain the same

Reviewers should cite such a claim as an MTD with \$0.00 in error.

The RC cites claims with incorrect DOS as MR payment errors if all of the following apply:

- Other details of the claim are incorrect (the medical record does not match the claims details)
- The DOS deviates by more than seven calendar days (the medical record shows the DOS are more than seven calendar days before or after the billed DOS)
- The medical record does not support the charges billed (e.g., procedure/treatment not performed but billed, wrong number of units billed)

Reviewers should cite such claims as errors using the appropriate MR error codes and with the appropriate payment amounts in error.

For HCBS, providers often deliver services on a daily basis. Therefore, such claims with incorrect DOS are payment errors if all of the following apply:

- The DOS does not match the claim
- The medical record does not support the charges billed (e.g., procedure/treatment

not performed but billed, wrong number of units billed)

Reviewers should cite such claims as errors using the appropriate MR error codes and with the appropriate payment amounts in error.

### ***c. Level of Care***

If the MR indicates the beneficiary did not meet medical necessity for inpatient hospitalization because the provider could have delivered and billed for that care at an outpatient observation level, the RC will cite an error for 100% of the paid amount. States will need to request a DR to re-price such an error as a partial error. When a state's Medicaid program or CHIP does not cover observation status, and outpatient observation level of care was medically necessary, the RC does not make an improper payment finding.

## **D. Medical Review Error Codes**

**MR1 – No Documentation Error:** The provider failed to respond to requests for the medical records or the provider responded that he or she did not have the requested documentation. The provider did not send any documentation related to the sampled payment.

**MR2 – Document(s) Absent from Record Error:** The submitted medical documentation is missing required information, making the record insufficient to support payment for the services billed. The provider submitted some documentation, but the documentation is inconclusive to support the billed service.

**MR3 – Procedure Code Error:** The medical service, treatment, and/or equipment was medically necessary and was provided at the proper level of care, but billed and paid based on a wrong procedure code.

**MR4 – Diagnosis Coding Error:** According to the medical record, the principal diagnosis code was incorrect or the payer paid for an incorrect DRG, resulting in a payment error.

**MR5 – Unbundling Error:** Unbundling includes instances in which a set of medical services was provided and billed as separate services when a CMS regulation, policy, or local practice dictates that they should have been billed as a set.

**MR6 – Number of Unit(s) Error:** The provider billed the incorrect number of units.

**MR7 – Medically Unnecessary Service Error:** There is sufficient documentation in the records for the reviewer to make an informed decision that the medical services or products were not medically necessary.

**MR8 – Policy Violation Error:** MR indicates that the billed service or procedure did not comply with a documented policy that applied to the service or procedure at the time it was performed and/or billed.

**MR9 – Improperly Completed Documentation Error:** The required forms and documents are present in the record, but inadequately completed to verify that the services were provided in

accordance with applicable policy or regulation.

**MR 10 – Administrative/Other Error:** MR determined a payment error, but the error does not fit into one of the other MR error categories.

**MTD – Medical Technical Deficiency:** MR determined deficiency that did not result in a payment error.

## **VIII. Difference Resolution and CMS Appeals Processes**

States may dispute error findings and deficiencies by filing DR requests with the RC and, if desired, by appealing DR decisions to CMS. These appellate procedures ensure that PERM provides states with due process protections by allowing them to seek redress for error findings they dispute.

### **A. Difference Resolution Process**

The DR process is the first means by which states can dispute the RC's MR error findings, DP error findings, and deficiencies. The RC officially reports DP and MR errors to the state through Sampling Unit Disposition (SUD) reports it publishes on the 15<sup>th</sup> and 30<sup>th</sup> days of each month. The publication of a SUD report starts the state's timeframe to dispute errors identified in the SUD report. Once the RC posts an error on a SUD report, the state's opportunity to file a DR request begins. From the date the RC posts the SUD report, states have 20 business days to file the DR (the SUD report date is day 1). States submit the DR request via SMERF. Instructions for requesting a DR through SMERF are located in the SMERF State User Guide on the SMERF homepage (<https://smerf.permrc.com>).

The RC reviews the DR request and issues a decision upholding, modifying, or overturning the initial PERM error finding. Once the RC has determined whether to reverse, modify, or uphold the original review decision, the RC will record the decision in SMERF and notify the state by email so the state will know to access SMERF to view the results of the DR. If the state is satisfied with the RC's decision, it does not need to take any further action. To dispute the DR decision, the state should access SMERF and file an Appeal to CMS.

The deadline for filing an Appeal is 10 business days after notification of the DR decision. States must submit all documents to the RC when requesting DR. If a state/provider submits new documents to CMS for Appeals, the claim will roll back to the RC for further review.

The SC includes unchallenged error findings in its improper payment rate calculations. Error findings that the RC upholds in its DR decisions are also included in the SC's improper payment rate calculations unless a state files an Appeal with CMS that successfully overturns the DR decision. The SC does not include error findings overturned by CMS or the RC in its improper payment rate calculations.

#### ***a. Eligibility for Difference Resolution***

The following terms and conditions apply to the DR process:

- All MR (except for MR1) and DP review errors are eligible for DR, including multiple errors per claim
- Deficiencies are eligible for DR
- No Documentation (MR1) error findings that arose because providers did not submit requested records to the RC are not eligible for DR
- States must request DR within 20 business days after the RC publishes the SUD report

- A DR request must contain, at a minimum:
  - The factual basis for the state’s dispute
  - Valid evidence that demonstrates the error finding was erroneous

#### ***b. Re-Pricing Partial Errors during Difference Resolution***

During the MR conducted for the PERM program, the RC reviews sampled claims’ medical records for medical necessity, coding validation, and accuracy of payment. In some cases, the RC may make an error finding (e.g., procedure code error, number of units error) that initially is reported as 100% error, but should only result in a portion of the payment being in error (partial error). The state is required to re-price partial errors using the DR process by submitting written re-pricing evidence so the RC can calculate the correct error amount.

The types of errors that may partially affect payment include:

- Procedure Code (MR3) Error
- Diagnosis Code/DRG (MR4) Error
- Unbundling (MR5) Error
- Number of Units (MR6) Error
- Administrative/Other (MR10) Error

In addition to the above error codes assigned, the SMERF system identifies partial errors that require re-pricing through the DR process under the list of cases available for DR. The title of the last column on the list is “needs to be re-priced” and the column will be marked with a “Y” (for yes) to indicate this is a partial error finding requiring the state to file a DR request to correct the amount in error.

For partial MR errors, the state can review the assigned error amounts to determine if it should seek re-pricing at the DR stage of review. State research of the correct payment amount can begin when the state receives the advanced error notification to allow time to gather evidence for re-pricing and to prepare for the DR opportunity.

When the state supplies the re-priced amount, the RC calculates the amount in error by taking the amount the state paid minus the amount that the state should have paid. If the result is a positive number (indicating the state should have paid less than it did), then the amount in error is an overpayment. If the result is a negative number (indicating the state should have paid more than it did), then the amount in error is an underpayment. If the state does not provide a re-priced amount, then the error will be 100 percent of the paid amount for that sampling unit. If the state does not provide supporting documentation during DR or if the state does not request DR, the full amount of the claim will remain as the error amount.

## **B. State Appeal to CMS**

An Appeal to CMS is the second and last step of the process states can use to dispute the RC’s MR and DP error findings and deficiencies. A state may only appeal error findings upheld by the

RC's DR decision. If the state disagrees with the RC's DR decision, they may file an Appeal with CMS asking that the DR decision be overturned. However, states cannot appeal error findings to CMS without first seeking redress through the DR process.

#### ***a. Notification of CMS Appeal Rights***

The RC posts its DR decision to SMERF and notifies states via email that the DR decision is available for review. This notification also describes the state's Appeal rights.

#### ***b. CMS Appeal Eligibility***

The following terms and conditions apply to the CMS Appeals process:

- The state must first dispute the PERM error finding through the DR process
- The state must file its Appeal to CMS through SMERF within 10 business days from the date the RC posted its DR decision

#### ***c. CMS Appeal Process***

The state, the RC, and CMS receive an email confirmation once the state files an Appeal. Upon receiving the state's Appeal, the RC provides CMS with access to the entire sampling unit record. The sampling unit record is a case file comprised of the following documents:

- A copy of the original PERM claim
- All medical records the RC reviewed
- State policies pertaining to the claim
- Applicable screen shots (if the state is appealing a DP error)
- The RC's review notes
- The state's written arguments and supporting evidence it presented during the DR proceedings
- The state's written arguments and supporting evidence it presented during the Appeal to CMS

CMS convenes a panel of PERM clinical and policy experts to review Appeals and usually reaches a decision within 45 days. Once CMS issues a decision, the state will receive an email notice that the Appeal decision is available for review in SMERF. The CMS review panel's decision is final and binding on states, as it is not reversible and marks the final step in the dispute process.

Error findings the RC upholds in its DR decisions are also included in the SC's improper payment rate calculations unless the states files an Appeal with CMS that successfully overturns the DR decision. The SC does not include error findings overturned by CMS or the RC in its improper payment rate calculations.

Note that the total error amount reported in a single claim cannot exceed the total paid amount

for the claim, regardless of how many MR and/or DP errors the RC cites in that claim.

***d. Receipt of Additional Documentation***

If the state pursuing an Appeal submits documentation to CMS that it did not submit to the RC during the RC's initial review or subsequent DR, the claim is removed from Appeal and re-reviewed by the RC based on the new documentation. If the RC's re-review does not result in an overturned error or the issuance of a different error finding, the state may request an Appeal if they do not agree with the DR decision. The state has 10 business days to file an Appeal to CMS related to the error finding.

## **IX. Errors and Improper Payment Rate Calculation**

In determining a PERM improper payment rate at the individual state level, at the national level, and for any program, the methodology is identical: the PERM improper payment rate is the ratio of estimated improper payments to estimated total payments.

Improper payments are determined by the appropriate medical, DP, and eligibility reviews, and are simply the absolute dollar value of the improper payment. An improper payment is generally the difference between what *was* paid and what *should have been* paid. “Estimated” payments are used in the calculation because only a sample of payments or cases is reviewed.

The total improper payments and total payments are estimated by extrapolating the sample errors and sample payments to the universe based on the appropriate sampling frequencies (we use the term “estimated” to describe the extrapolated figures).

### **A. Cycle Cutoff**

The SC calculates improper payment rates based on information received from states/providers by the cycle cutoff date. Typically, the cycle cutoff date is the second July 15 of a measurement cycle.

However, the cycle manager may push back the cycle cutoff date depending on the progress of the cycle.

The RC reviews documentation and completes DRs/Appeals requests it receives by the cycle cutoff date for improper payment rate calculation.

The PERM program does not include documentation received or DRs/Appeals requested after the cycle cutoff date in improper payment rate calculations. However, these instances may be eligible for continued processing.

#### **a. Multiple Errors on One Claim**

The RC will reconcile all claims when it identifies more than one error under MR or DP review before reporting the final findings to the SC for the national improper payment rate calculation. Final PERM error amounts cannot exceed the total paid amount on the claim.

### **B. Adjustments**

As noted earlier, the dollar amount of error, for PERM purposes, is generally the difference between what *was* paid and what *should have been* paid. PERM uses the original paid date and original paid amount to determine what was paid, with the exception of any adjustments made within 60 days of the original paid date.

PERM does not consider adjustments made outside of the 60-day timeframe allowed under PERM in determining whether to cite a payment error. The reviewer determines if the payer made a correct payment based on the policies in effect at the time of the payment and the state’s compliance with its payment policies. That is, the reviewer compares the payment amount to the



amount the payer should have paid at the time payment was made. For example, if prices are changed retroactively but the changes are made outside of the 60-day adjustment timeframe, it is not an error *if the payment made was based on the pricing schedule on file at the time payment was made*. Thus, if a payment was made and then adjusted more than 60 days later because of a state-initiated adjustment that was required for programmatic reasons that are unrelated to payment errors, it should not be considered an error in the PERM review.

### C. Claims Improper Payment Rate Calculation

PERM will calculate the claims improper payment rates for each program. PERM calculates a total of three improper payment rates for Medicaid and CHIP.

- A FFS payment improper payment rate
- A managed care payment improper payment rate
- A combined FFS and managed care payment improper payment rate (dollar weighted)

### D. Eligibility Improper Payment Rate Calculation

PERM will not calculate state-specific eligibility improper payment rates for FY 2014, FY 2015, FY 2016, and FY 2017. States will participate in the FY 2014 – 2017 eligibility pilots, as discussed above. For the purposes of the national Medicaid and CHIP improper payment rates, state-specific eligibility rates will be held constant from the state's prior PERM cycle. In the proceeding sections, any reference to inclusion of state eligibility improper payment rates refers to this prior cycle improper payment rate.

### E. State-Level Improper Payment Rate Calculation

States participating in PERM have up to four separate components:

- Medicaid FFS
- Medicaid managed care
- CHIP FFS
- CHIP managed care

Each component has its own universe and sample that are being measured. Because the payment components (i.e., FFS and managed care) use independent universes, the improper payment rates are additive. Since the eligibility component does not use an independent universe, a correction factor is applied to estimate the total program improper payment rate, under the assumption that eligibility errors are independent of the other types of errors.

The state-level improper payment rate is estimated as:

$$\hat{R}_i = \frac{\hat{t}_{e_i}}{\hat{t}_{p_i}}$$

In the equation,  $\hat{R}_i$  is the estimated improper payment rate for state  $i$ ;  $\hat{t}_{e_i}$  is the estimated dollars in error projected for state  $i$  and  $\hat{t}_{p_i}$  is the estimated total payments for state  $i$ . Then,

$$\hat{t}_{e_i} = \sum_{j=1}^8 \frac{M_{i,j}}{m_{i,j}} E_{i,j}$$

and

$$\hat{t}_{p_i} = \sum_{j=1}^8 \frac{M_{i,j}}{m_{i,j}} P_{i,j}$$

In these equations,  $M_{i,j}$  is the number of items in the universe for state  $i$  in strata  $j$  and  $m_{i,j}$  is the number of items in the sample for state  $i$  in stratum  $j$ . The ratio of items in the universe to items in the sample is the inverse of the sampling frequency. Dollars in error in the sample for stratum  $j$  and state  $i$ , denoted  $E_{i,j}$ , is weighted by the inverse of the sampling frequency to estimate dollars in error in the universe for that stratum. In this example, the total number of strata is eight.

For example, if there are 10,000 items in the universe in stratum  $j$ , and the sample size in  $j$  is 100 items, the weight for the dollars in error in the stratum  $j$  sample is 100 (or 10,000/100). The estimated total dollars in error are then added across each of the eight strata to obtain total dollars in error for the universe. Total payments are estimated in the same way, where  $P_{i,j}$  is the total payments in the sample in stratum  $j$  for state  $i$ .

#### ***a. Combining Claims Review Improper Payment Rates across Program Areas***

Combining the claims review improper payment rates (i.e., combining the FFS and managed care improper payment rate for Medicaid and the FFS and managed care improper payment rate for CHIP), is relatively straightforward given that population payments are known. Note that CMS does not use true population payments in calculating state rates for each program area. The reason for this is two-fold. First, the combined ratio estimator used allows for correction of possible bias if the sampled average payment amount differs from the universe average payment amount. If CMS used a combined ratio estimator to combine the program areas at the state level, one program area that realized high sample average payment amount compared to the universe average would have too much influence in projections. Second, combining program area rates using the shares of expenditures as weights reduces the variance in the estimates from this source. Furthermore, following this method allows the same method for combining program area claims review rates at both the state and national level.

The following equations use the estimated state or national improper payment rates and variances calculated in the previous two sections.

Let the overall claims review improper payment rate for Medicaid or CHIP be defined as:

$$\hat{R}_C = \frac{t_{PFFS} \hat{R}_{FFS} + t_{PMC} \hat{R}_{MC}}{t_p}$$

where

$$t_p = t_{PFFS} + t_{PMC}$$

In this equation  $\hat{R}$  is the improper payment rate for FFS, managed care or combined ©, and  $t$  represents total payments for FFS, managed care, or the total, depending upon the subscript.

#### ***b. Combining Claims Improper Payment Rates and the Eligibility Improper Payment Rate***

The claims rate and the eligibility rate are not mutually exclusive. Combining the two achieves a total, or combined, improper payment rate, which necessitates netting out the estimated overlap in projected error.

After combining the FFS and managed care components of each program into one overall claims improper payment rate for Medicaid and one for CHIP, respectively, at the state and national levels, these rates are combined with the respective eligibility improper payment rates for each program. The combination of the claims review rate and the eligibility rate will be referred to as the combined improper payment rate. The estimated combined improper payment rate is given by:

$$\hat{R}_T = \hat{R}_C + \hat{R}_E - \hat{R}_E \hat{R}_C$$

where

$\hat{R}_T$  denotes the estimated Total, or Combined Improper Payment Rate

$\hat{R}_C$  denotes the estimated Claims Improper Payment Rate

and

$\hat{R}_E$  denotes the estimated Eligibility Improper Payment Rate

#### ***c. Continued Processing***

Continued processing occurs when a claim did not have time to go through the full PERM process before the cycle cutoff date. Examples include:

Medical records for a claim received after the cycle cutoff date but within 75 days of

the initial request for medical records

- An error cited before the cycle cutoff date, when the state's allowable timeframe to request DR and CMS Appeal extended beyond the cutoff date

Claims will complete the PERM process through continued processing and CMS will recalculate a state's improper payment rate based on the continued processing results.

By PERM regulation, providers must submit medical documentation within 75 calendar days of the RC's Initial Request or by the cycle cutoff date. Therefore, CMS will not accept any new documentation after the cycle cutoff date that is not part of continued processing. However, if a state has documentation to support that a claim previously called an error was correctly paid (e.g., successful provider Appeal results, claim adjusted after PERM 60-day window), they can work with their CMS Regional Office (RO) financial contact to determine what adjustment to the expenditure reports is required for recovery purposes.

#### **F. State-Specific Improper Payment Rate Recalculations**

CMS will recalculate a state's improper payment rate under two circumstances:

- A portion of the state's sampled claims underwent continued processing and errors were overturned/error amounts were changed
- A PERM contractor's mistake was identified

CMS will issue recalculated improper payment rates to all states affected by continued processing once continued processing is complete for a cycle. A new state-specific sample size for any affected component will also be calculated based on the recalculated improper payment rate.

A state's improper payment rate is factored into the national rolling improper payment rate for three years. Improper payment rate recalculations will not be included in the first year improper payment rate because the recalculations occur after this number is reported. However, state-specific improper payment rate recalculations will be included in the next two years a state's improper payment rate is included in the rolling rate.

#### **G. National Rolling Improper Payment Rate Calculation**

To go from the improper payment rates for individual states to a national rolling improper payment rate, the most current data available from all 50 states and the District of Columbia is first aggregated. This data includes the 17 states in the most current sample, as well as samples from the previous two years. Each state is benchmarked to its reported payments from the year it was sampled. Using the state expenditures as weights guarantees that a state's impact on the national rolling improper payment rate is proportional to the size of its payment.

Then, the error and payment amounts by component are combined across all 51 states to calculate the national rolling component improper payment rates for FFS, managed care, and eligibility. The component improper payment rates are combined to form the overall national rolling improper payment rate, following the same method as used in calculating the overall state

improper payment rates.

The formula for calculating each component improper payment rate is as follows:

$$\hat{R}_T = \frac{\sum_{i=1}^{51} t_{p_i} \hat{R}_i}{t_p}$$

Where  $\hat{R}_T$  is the national rolling improper payment rate,  $t_{p_i}$  is the total expenditure for state  $i$ , and  $\hat{R}_i$  is the estimated improper payment rate for state  $i$ . The sum of the error amounts across all 51 states is then divided by  $t_p$ , which is the total national expenditure.

Note that there is no “^” over the state and national payment data. This means that they are not estimated from the sample. These are actual payment expenditures. Hence, the national rolling improper payment rate has an intuitive interpretation as a weighted sum of the estimated state improper payment rates, where the weights are shares of expenditures.

#### H. Cycle Improper Payment Rate Calculation

The cycle improper payment rate is calculated using a similar method to the one used in calculating the national rolling improper payment rate. The component improper payment rates are calculated using the weighted sums of improper payments and total expenditures across the 17 cycle states. Then, the cycle improper payment rate is calculated using the component improper payment rates.

The formula for the 17-state component cycle improper payment rate is as follows:

$$\hat{R}_H = \frac{\sum_{i=1}^{17} t_{p_i} \hat{R}_i}{t_h}$$

Where  $\hat{R}_H$  is the 17-state cycle improper payment rate,  $t_{p_i}$  is the total expenditure for state  $i$ ,  $\hat{R}_i$  is the estimated improper payment rate for state  $i$ , and  $t_h$  is the total expenditure from the 17 states in the cycle.

## **X. Improper Payment Rate Targets**

OMB guidance for implementing IPERIA requires CMS to set targets for future erroneous payment levels for Medicaid and CHIP. Provided CMS has estimated a baseline improper payment rate for the program, CMS is required to include a target for the program's future erroneous payment rates in the AFR. Targets must be lower than the most recent estimated improper payment rate.

### **A. National Improper Payment Rate Targets**

CMS sets targets for the official three-year rolling national program improper payment rate. Target improper payment rates are set one year out from the most recently published improper payment rate and are negotiated by OMB, HHS, and CMS. The HHS AFR and [paymentaccuracy.gov](https://www.paymentaccuracy.gov) list the current improper payment rate targets.

CMS reported the first baseline, three-year, rolling Medicaid improper payment rate in the 2010 AFR and has published improper payment rate targets for Medicaid. The first CHIP baseline improper payment rate was published in the 2014 AFR and CMS is currently publishing the improper payment rate targets for this program.

### **B. State-specific Improper Payment Rate Targets**

The national Medicaid improper payment rate is a compilation of state-specific improper payment rates and, therefore, collaboration between CMS and the states is vital in achieving the national improper payment rate target. CMS sets state-specific overall program and component improper payment rate targets that allow CMS to collaborate with states to meet the national target.

When setting state-specific improper payment rate targets, CMS asks states to reduce their component improper payment rates by a fixed proportion relative to an “anchor” rate. The anchor rates are currently set at 1.5 percent for FFS and 1 percent for managed care. Each state must reduce the difference between the previous component improper payment rate and the component anchor rate by 50 percent. States with component improper payment rates in the previous measurement that are less than the anchor rates will be expected to achieve the same or better improper payment rate in the next measurement period.

See **Exhibit 6** for an example of how PERM calculates state-specific target improper payment rates.

#### Exhibit 6. Example Calculation of State-specific Target Improper Payment Rates

	FFS	Managed Care	Overall Claims
<b>FY 2014 Rate</b>	10.6%	0.1%	6.9%
<b>Anchor Rate</b>	1.5%	1%	
<b>Difference between FY2013 rate and anchor rate</b>	9.1%	N/A (under anchor)	
<b>50 percent of the difference</b>	4.5%	N/A	
<b>Target FY 2017 Rate</b>	6.1%	0.1%	4.0%

State-specific targets for a given PERM cycle are available when state improper payment rates are released from the previous PERM cycle.

CMS may consider suggested adjustments to component targets, given the overall state target does not increase. Such was the case for the FY 2017 state targets, since new regulations caused FY 2013 and FY 2014 cycle states to have higher improper payment rates than their previous measurements in FY 2010 and FY 2011. There are currently no penalties or rewards in place if states do or do not meet their improper payment rate targets.

#### C. Improper Payment Rate Reporting

At the conclusion of each PERM cycle, state-specific reports are shared for each program (Medicaid and CHIP). The following reports are submitted to states, typically in November, once national improper payment rates are published in the AFR.

- **Error rate notification letter:** The letter contains the official state program improper payment rate, overall and by component (i.e., FFS, managed care), as well as sample sizes and improper payment rate targets for the state's next PERM cycle
- **Cycle Summary Reports:** The report contains analysis of the error findings for each component (i.e., FFS, managed care), including specific information on each error based on RC claim reviews

## **XI. Corrective Action Process**

Following each measurement cycle, each state included in the measurement must complete and submit a CAP based on the errors found during the PERM process.

CMS provides guidance to state contacts on the CAP process upon publishing PERM improper payment rates and throughout CAP development until the CAP's specified due date, which is 90 calendar days after the state's improper payment rates are posted on SMERF.

The CAP process involves analyzing findings from PERM, identifying root causes of errors, and developing corrective actions designed to reduce major error causes, trends in errors, or other vulnerabilities to reduce improper payments. The state's new CAP should also include an evaluation of its previous CAP. Through the CAP process, states can take administrative actions to reduce errors that cause improper Medicaid and CHIP payments.

The state must submit CAPs to its assigned PERM State Liaison 90 calendar days after the date on which the RC posts its improper payment rates on SMERF. Each CAP remains in effect for three FYs, at which point the state updates its CAP after the next PERM cycle's measurement phase.

### **A. PERM State Liaison Team**

The role of the PERM State Liaison Team in regard to the CAP process is to support the corrective action phase of the PERM program by analyzing improper payment rate data to help reduce improper payments in Medicaid and CHIP through corrective actions taken at the federal and state levels. The team maintains partnerships with the states to foster collaboration and gain state participation in establishing their corrective actions. The team's primary responsibilities include working with the states to assist them in the development, timely submission, implementation, and evaluation of their CAPs.

The PERM State Liaison Team invites the CMS ROs, the Center for Program Integrity (CPI), and the CMS PERM contractors to attend all calls it schedules (e.g., kick-off calls, state cycle summary discussion calls, CAP evaluation calls, and other calls that are necessary and reasonable).

### **B. CAP Kick-off Call**

In September, after the measurement review ends and before CMS publishes the states' improper payment rates on SMERF and in the AFR, the PERM State Liaison Team holds an initial "CAP kick-off call" with all states in the measurement to discuss the corrective action process. Prior to the call, the team forwards several documents to the state for review, including a PowerPoint presentation explaining the CAP process and a "kick-off call" agenda. The states are encouraged to invite whomever they feel needs to attend this kick-off call.



#### ***a. Individual State Calls***

The next contact with the states is in November after CMS releases the official improper payment rate and posts the state's improper payment rate on SMERF. The PERM State Liaison Team makes individual calls to each of the 17 states that participated in the cycle to discuss the state-specific CAP template, the Cycle Summary Report and related Executive Summary, and state-specific error analysis findings that the contractors prepared.

#### ***b. State Forum Call***

CMS allows each state in the CAP phase of the PERM program to have a "State Forum Call" to discuss best practices related to developing corrective actions. While CMS provides the conference call line, a state volunteer from the cycle of states facilitates the discussions. After the first State Forum Call, states may decide whether they need a second call for further discussion.

#### ***c. State Systems Workgroup***

The State Systems Workgroup (SSW) is a collaborative group consisting of representatives from CMS, the SC, the RC, the ROs and the states to address state system issues. This group works together to identify underlying problems and discuss how those issues can be resolved. The SSW call typically occurs when states submit their final CAPs so the states can include those issues and related corrective actions in their CAPs. CMS will contact states if it identifies any issues and states are welcome to contact CMS at any time if they would like to discuss any program issues.

### **C. Corrective Action Panel**

The key to a successful CAP is the creation of a corrective action panel. The panel must encourage participation and commitment of top management to coordinate efforts across the state agency and ensure participation of major agency leaders.

The panel should include senior management, such as managers responsible for policy and program development, field operations, research and statistics, finance, DP, human resources (for staff development), and the legal department. Panel leadership should rest with the state Medicaid or CHIP Director.

Responsibilities of the corrective action panel include:

- Providing insight on possible causes of errors
- Communicating CAP progress to management and other stakeholders
- Developing strategies
- Making all major decisions on the planning, implementation, and evaluation of corrective actions

## **D. Components of the Corrective Action Plan**

CAPs are composed of five elements and required by regulation. The five elements are:

- Data analysis
- Program analysis
- Corrective action planning
- Implementation and monitoring
- Evaluation

States are required to submit separate CAPs for Medicaid and CHIP.

### ***a. Data Analysis***

CMS pre-populates the CAP template with the number of errors and dollars in error for each qualifier within the error category. The template provides space for states to enter additional optional data analysis if they would like to provide more information about the nature of the error. Data analysis enables the state to gain a more thorough understanding of the root cause of the errors, when the errors occurred, and who or what caused each error. For example, data analysis might identify that an error:

- Accounted for 10% of the total errors identified during the MR
- Resulted in a total overpayment of \$100
- Occurred because the provider did not maintain the personal care assistant documentation in accordance with state policy to support the 10 units of procedure code T1019 (personal care services, per 15 minutes) for the DOS sampled

### ***b. Program Analysis***

Program analysis is the most critical component of the corrective action process, requiring the state to review the data analysis findings to determine the specific cause of each error. The state must identify the root causes of the errors to determine the best solutions for each (e.g., why providers are not complying with MRRs). The state may need to analyze its operational policies and procedures to identify those policies and/or procedures that are more likely to contribute to errors (e.g., policies are unclear, lack of operational oversight at the local level).

Program analysis, along with data analysis, provides the framework to evaluate the relevant facts and causal factors and develop the most appropriate, timely corrective actions needed to resolve the finding and prevent recurrence. For example, if inadequate training caused errors, the state should take actions to strengthen its training programs, including actions like worker interviews, questionnaires, policy reviews, and conferences with local managers, etc.

The state must explain how its planned program analysis actions address 100% of the payment error types. Although a state may not be inclined to plan corrective actions for one-time error situations, such as human error, or corrective actions that are not cost-effective, it must at least

address each error.

In its program analysis, the state should address all errors and deficiencies. The state should describe how its program analysis actions go beyond the surface cause (nature) of each error and look to the root causes. The state should describe actions it is taking to meet or exceed its PERM improper payment rate target, as specified by CMS. The state also should discuss why a particular program or operational procedure caused a specific error and identify the root causes of all errors.

### ***c. Corrective Action Planning***

Based on its data and program analysis, the state must determine what corrective actions to implement. CMS encourages the state to use the most cost-effective corrective actions possible, to best correct and address the root cause of each error. Actions can be short-term or long-term. Benefits of implementing corrective actions include the reduction of improper payments and the development of a management tool to promote efficiency in program operations.

The state must address each error type, but may decide what corrective actions to implement to decrease or eliminate errors. It may not be cost-effective to implement corrective actions for each error. CMS understands these situations and does not encourage states to make inefficient fixes. It may be helpful for the state to perform a cost/benefit analysis to calculate the total expected costs of corrective actions and weigh them against the actions' expected benefits. If the state determines the cost to implement a corrective action outweighs its likely benefits, the state may choose not to implement the corrective action. If the state chooses not to take definitive corrective action, it should explain its decision in the CAP, along with its rationale (e.g., quick fix, no potential cost savings, resource constraints, etc.).

The state should explain its overall approach toward CAP planning, identify its PERM improper payment rate target goal (as specified by CMS), and explain actions the state is taking to meet its target goal. The state should describe its planned corrective action initiatives and how these actions will reduce or eliminate improper payments, including:

- Specific error causes being targeted
- A timeline listing expected due dates for resolving the problem(s) (causes of errors)
- Description of the plan to monitor CAP implementation
- Specification of the name and title of the person who has overall responsibility for the CAP

### ***d. Implementation and Monitoring***

The state should develop a schedule to perform corrective actions and describe the tasks necessary to implement the CAP, linking those tasks to the schedule and specifying milestones and implementation dates. The state should note whether the corrective action is statewide or just in certain geographical areas. The implementation schedule must identify major tasks, key personnel or components responsible for each task, a timeline for each task (including target implementation dates), milestones (e.g., start dates, final implementation dates), and the monitoring process.

Federal regulations also specify that states must monitor their CAPs to determine whether the implemented CAP yields intended results and helps meet identified error reduction goals. The state should describe how it will monitor the corrective actions in its CAPs. Monitoring activities are ongoing, operational actions the state takes while implementing its CAP. Monitoring activities enable the state to keep track of its ongoing efforts to reduce its PERM errors. An integral part of successful CAP monitoring is maintaining a systematic approach to track and report the status of corrective actions to successful closure and implementation.

#### ***e. Evaluation***

The state must evaluate the effectiveness of its corrective actions by assessing improvements in operations and/or error reduction. The state may then decide to discontinue, modify, or terminate and replace one or more of its corrective actions. The state must evaluate the corrective actions it implements by assessing:

- Improvements in operations
- Efficiencies
- Number of errors
- Improper payments

As part of its new CAP, the state must evaluate and include updates on the corrective actions taken in its prior cycle, including:

- Effectiveness of implemented corrective actions using reliable data, such as performing special studies, state audits, focus reviews, etc.
- When the action was implemented
- The status of the corrective action (e.g., completed or still in progress)
- Expected completion date and if the corrective action is on target
- Actions not implemented and those actions, if any, that were substituted, ineffective, or abandoned and what alternative actions it took
- Findings on short-term corrective actions
- Status of the long-term corrective actions
- Determination of if the state met the PERM improper payment rate targets CMS identified

The state also should use the Medicaid FFS and managed care comparisons information in its Cycle Summary Report to evaluate the effectiveness of the corrective actions it took in the previous cycle.

#### **E. Corrective Action Plan Submission Details**

The state must submit CAPs to its assigned PERM State Liaison no more than 90 calendar days after it receives its official improper payment rate notifications. States will receive a pre-

populated, state-specific CAP template for both Medicaid and CHIP. States are required to complete every section of the CAP template and address every error and deficiency. The CAP template is based on information that went into the official state improper payment rate, so this will include errors that were overturned during continued processing. The PERM State Liaison will provide a CAP Addendum report to show any changes to final findings that occurred during continued processing. States can identify any overturned errors and reference them in the CAP and no corrective actions are required for these overturned errors. States cannot delete any portion of the CAP template and they must submit separate CAPs for Medicaid and CHIP.

CMS encourages states to submit drafts to their designated PERM State Liaison before the due date to receive feedback before submitting their CAPs. While drafts are not required, they are strongly encouraged. Once the state submits the drafts, CMS will review them and provide additional feedback that states can incorporate into their final CAP submission. The state submits final CAPs to its CMS PERM State Liaison for review and distribution to the members of the CMS collaboration workgroup, which includes the CMS State Liaison, the state RO representative, the CPI representatives, and the PERM contractors. Each state will receive a letter of receipt acknowledging its final CAP submission. After all parties review the CAPs, the parties may conduct individual calls with the states for further discussion.

#### **F. Post CAP Submission Activities**

- **March through end of May** – After all CAPs have been evaluated, the PERM State Liaison, CMS RO PERM contact, designated CPI staff, and the PERM contractors participate in a conference call with each state to discuss the findings, request clarification, and determine if additional information is needed.
- **Webinars** – Each state is required to have a post-CAP webinar to facilitate active dialogue between the state, CMS, Ros, CPI, and CMS' contractors. CMS presents information to the state on PERM initiatives and proposed improvements to the next PERM measurement. The state is required to give an oral presentation of its CAP and CMS encourages presentations that provide a high-level overview of findings and mitigation strategies.
- **CAP** – Based on the meeting, states may need to submit revisions to their CAPs. States have 15 days from the meeting to submit revisions, if required. States must notify their CMS State Liaison of any major changes to their corrective actions such as implementation, modifications, terminations, etc.
- **Follow-up** – The CMS State Liaison will contact the state on an annual basis to follow up on its CAP implementation status between cycles.

## **XII. Recoveries**

CMS expects to recover the federal share on a claim-by-claim basis from the overpayments found in error. Within the PERM program, the only funds CMS can recover are from claims that contractors sampled and found to have contained improper payments resulting in overpayments.

Long-standing statutory and regulatory requirements govern recoveries of overpayments. The statutory and regulatory requirements for Medicaid are found under section 1903(d)(2) of the Act, 42 CFR Part 433 subpart F and for CHIP under section 2105(e)(6)(B) and 2105(f) of the Act, 42 CFR Part 457 subpart B and F.

According to 42 CFR 431.1002, states must return to CMS the federal share of identified overpayments based on the PERM DP reviews and MRs. Section 1903(u) of the Act and related regulations at 42 CFR Part 431, subpart P address payments based on erroneous Medicaid eligibility determinations. For purposes of PERM, CMS considers states officially notified of identified improper payments by 1) the posting of Medicaid and CHIP FEFR reports on SMERF and 2) by receiving an official letter with “notification of an overpayment” via email.

The state must return the federal share on a claim with an overpayment error within one year from the date the RC submits FEFR reports. After the RC completes all continued processing reviews, it creates a FEFR report that includes a comprehensive list of all claims with overpayment errors.

### **A. Final Errors For Recovery (FEFR) Report**

The RC posts each state’s FEFR report on SMERF after it completes continued processing and finalizes all findings for the state for that cycle. The FEFR report serves as the final list of overpayments for which a state must return the federal share for a PERM cycle. The report includes the total computable amount of all overpayments for the cycle, and the RC officially notifies state Medicaid and CHIP Directors via email when it posts the FEFR report on SMERF. States are only required to recover the federal share for any overpayment errors.

### **B. Changes on Recoveries**

Effective March 23, 2010, the state must return the federal share on a claim with an overpayment error within one year from the date the RC submits the FEFR reports for Medicaid or CHIP, per current law. If the state fails to recover such overpayments within one year of identification, it must make an adjustment to refund the federal share of the overpayment via the CMS-64 and CMS-21 forms as described above.

#### **a. Exceptions**

There are some exceptions to the requirement to return the federal share of an overpayment within one year of identification:

- **The state collects the overpayment from the provider** – If the state receives recovery of the overpayment from the provider, the one-year rule no longer applies.

When the state collects the overpayment from the provider, the state must return the federal share on the next quarter-ending CMS-64 and/or CMS-21 expenditure report.

- **The state adjusts the claim to the correct amount** – The PERM program reviews claims paid or denied in each quarter of the federal FY, including adjustments made to the claims within 60 days of the original paid date. Thus, the RC could identify overpayments for claims where the state waited more than 60 days from the original paid date to adjust to the correct paid amount. In such instances, the state is not required to return the federal share. The state should notify the PERM Recovery Lead and provide documentation (e.g. screen shots, etc.) of the adjustment.
- **Provider successfully appeals to the state** – If a provider successfully appeals the error to an Administrative Law Judge (ALJ), the state can submit proof of the ALJ decision to the PERM State Liaison and will not need to return the federal share of the overpayment. Many states have an informal Appeals process in place that is preferable and less time-consuming than a formal ALJ Appeal. If an error is overturned through an informal Appeal process, the state should submit documentation to the PERM State Liaison and CMS reviews the documentation to determine whether the federal share needs to be returned.
- **Provider or state submits documentation after the cycle has ended** – After the cycle is over, when states send out recovery demand letters to providers, providers sometimes submit the outstanding medical record to the state [mostly for No Documentation (MR1) and Document(s) Absent from Record (MR2) errors]. Since this occurs after the cycle cutoff date, the claim remains an error for PERM purposes, but CMS cannot request in good faith that states return the federal share if there is sufficient proof that demonstrates the state paid the claim correctly. The state should send the documentation to the PERM State Liaison through a password protected and encrypted CD. As a reminder, please do not send PII nor PHI information through the email. CMS' PERM Appeals panel reviews the documentation to determine if it demonstrates the state correctly paid the claim.

#### ***b. Underpayments***

Underpayments are not included on PERM FEFR reports and are not part of the PERM recoveries process. Typically, CMS is entitled to recoup the federal credit for overpayments regardless of whether the state has collected from the provider or not. However, CMS would not credit an underpayment until the state actually corrected and paid the underpayment, at which point the state would report it as a normal operating expense and not as an adjustment on an overpayments schedule.

### Version Control Updates

Date	Version	Description of Changes and Updates	Author
July 12, 2013	1.0	Added version control table, updated where appropriate to 2012 language, added DP, MRR, MR updates to August 30, 2012 CMS PERM Manual	A+ PERM Team (LCH, CM, MB,SK, AK)
October 15, 2013	1.1	Made updates to Introduction (Section 10) and Claims and Sampling (Section 20), Eligibility Universe and Sampling (Section 30), Eligibility Reviews (Section 80), Error Code Table (Section 100), incorporated CMS edits, updated where appropriate to 2014 language	Lewin (JM, AH)
January 27, 2015	1.2	Made updates to the RC sections of the manual	A+ PERM Team (LCH, MB, SK)
August 2015	1.3	Overall updates to content and formatting, including removal of eligibility reflective of FY14- 17 pilots	A+, Lewin, CMS
September 2016	1.4	Overall updates to content	CNI, Lewin, CMS
January 2017	1.5	Overall minor updates to content	CMS, Lewin
July 2017	1.6	Overall updates to content	CNI
January 2018	1.7	Overall updates to content	CMS