

Addendum to FY 2010 Payment Error Rate Measurement (PERM) Eligibility Review Instructions

Children's Health Insurance Program Reauthorization Act of 2009

On February 4, 2009, the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) (Pub L 111-3) was enacted. Sections 203 and 601 of CHIPRA relate to the PERM program. Section 203 of CHIPRA establishes an error 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 Medicaid Eligibility Quality Control (MEQC) and PERM requirements.

Section 212 of CHIPRA provides for reducing administrative barriers to enrollment for children and pregnant women in Medicaid and CHIP. Under CHIPRA, States are encouraged to use joint applications and allow for enrollment into the programs without face to face interviews. In some States, depending on policies in their State's written policies and procedures, redeterminations are conducted through ex parte reviews by the State agency of available records and databases, in which there is no required follow up by the recipient if there are no reportable changes in circumstances. With a passive renewal (for passive redetermination), a beneficiary is asked to review the information currently on file for the case and to report any changes.

Section 601(a) of CHIPRA amends Section 2105(c) of the Social Security Act (the Act) and provides for a 90 percent Federal match for CHIP spending related to PERM administration and excludes such spending from the 10 percent administrative cap (Section 2105(c) (2) of the Act 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).

CHIPRA requires a new PERM rule and delays any calculation of a PERM error rate for CHIP until 6 months after the new PERM rule is effective. Additionally, CHIPRA provides that States that were scheduled for PERM measurement in federal fiscal year (FY) 2007 may elect to accept a CHIP PERM error rate determined in whole or in part on the basis of data for FY 2007, or may elect instead to consider its PERM measurement conducted for FY 2010 as the first fiscal year for which PERM applies to the State for CHIP. Similarly, CHIPRA provides that States that were scheduled for PERM measurement in FY 2008 may elect to accept a CHIP PERM error rate determined in whole or in part on the basis of data for FY 2008, or may elect instead to consider its PERM measurement conducted for FY 2011 as the first fiscal year for which PERM applies to the State for CHIP. CHIPRA requires that the new PERM final 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;
- Provide that the payment error rate determined for a State shall not take into account payment errors resulting from the State’s verification of an applicant’s self declaration; and
- State-specific sample sizes for application of the PERM requirements.

In addition, CHIPRA requires harmonization of the PERM and MEQC programs and provides States with the option to apply PERM Medicaid and Title XXI Medicaid expansion data resulting from its eligibility reviews to meet MEQC requirements and vice versa, with certain conditions.

Beginning in FY 2009 (with the enactment of CHIPRA) States were allowed the option to use their eligibility review and payment review findings from the MEQC reviews to meet the PERM eligibility requirement for Medicaid and Title XXI Medicaid expansion. States electing this option are still responsible for fulfilling the reporting requirements for MEQC to the respective CMS Regional Office and PERM on the eligibility tracking website.

The PERM final rule, effective September 10th, 2010, allows the option for States to use eligibility data for Medicaid and Title XXI Medicaid expansion PERM reviews to comply with the “traditional” MEQC statutory requirements, under certain conditions. Allowing data substitution will minimize the duplication of effort between MEQC and the PERM eligibility reviews. The option to use findings from the PERM reviews to meet MEQC requirements will go into effect with the FY 2011 cycle.

PERM Eligibility Review Process Changes Resulting from CHIPRA

As noted above, the PERM final rule went into effect on September 10th, 2010, which is prior to the end of the FY 2010 PERM measurement. The following provisions in this regulation will apply to states in the FY 2010 cycle.

Review of Self-Declaration

The prior instructions for the FY2010 PERM eligibility review stated that self-declared information could be considered acceptable verification for categorical and financial eligibility elements identified in the guidance as *unlikely to change*, if documentation was not required by Federal law or regulation. However, for those eligibility elements identified as *likely to change*, states were required to verify any self-declared information or collect a new self-declaration statement. If the information could not be collected or if the new statement was found to be

inconsistent with information in the case records, States were required to identify these cases as “undetermined” and consider the case, and any associated payments, as an error for PERM.

The new PERM regulation allows self-declared information to be accepted for verification of categorical and financial eligibility elements in the PERM review, as long as the information is not required by Federal law or regulation and the self-declaration statement was made in accordance with official written State policy. In addition, the self-declaration statement or attestation must be:

- Not older than 12 months prior to the sample month;
- In a State-approved, valid format, e.g., signed under penalty of perjury; and
- Consistent with other information in the case file, or if inconsistent, other evidence in the case file resolves the inconsistency.

For PERM eligibility reviews completed after September 10, 2010, (the effective date of the new regulation), states *must* follow the new instructions for reviewing self-declared cases. In addition, for PERM eligibility reviews completed prior September 10, 2010, states *may choose* whether to re-review cases following the new guidance.

Calculation of Error Rates

CMS, in conjunction with the Statistical Contractor, will calculate the official eligibility error rates for each program using data submitted by the States. States will no longer need to submit a final error rate calculation as part of the Summary Findings Report (due to CMS on July 1, 2011 for FY 2010 PERM states). States may still calculate their own eligibility error rates using the formulas in Appendix J of the PERM eligibility review guidance. Additionally, the eligibility data submission website will continue to have the calculator function available to States. CMS will provide an error rate for States to use, as well as offer assistance from the Statistical Contractor to explain State-specific error rates.

Eligibility Appeals Process

Where agency independence causes a difference in findings between the agency and the State Medicaid and CHIP agencies, States may conduct appeals for eligibility review findings in accordance with the State’s appeal process. The State Medicaid or CHIP agencies may document their differences in writing to the agency for consideration. If resolutions of differences occur during the PERM cycle, eligibility findings can be updated to reflect the resolution. If differences are not resolved by the deadline for eligibility findings to be submitted to CMS (July 1), the documentation of the difference can be submitted to CMS for consideration no sooner than 60 days and no later than 90 days after the deadline for eligibility findings.

In consideration of States that may not have a State appeals process in place, CMS will allow the agency to make State findings available to each respective State's Medicaid and CHIP agencies for the period between the final monthly payment findings submission and eligibility error rate calculation, for example, April 15th through June 15th after the fiscal year being measured or according to the eligibility timeline. CMS will facilitate documentation exchange between the State Medicaid or CHIP agency and the agency conducting the PERM eligibility reviews to resolve differences.

If any eligibility appeals issues involve Federal policy, States can appeal to CMS for resolution. If CMS' decision causes an erroneous payment finding to be made, any resulting recoveries will be governed by §431.1002.