

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850



APR 10 2008

SHO #08-001

Dear State Health Official:

The preamble to the Payment Error Rate Measurement (PERM) program final regulation published in the Federal Register on August 31, 2007 (72 FR 50490) contained a policy change from the interim final rule published on August 28, 2006, that allows States to dispute medical review errors that were cited for insufficient documentation effective 10/1/2007. The policy change applies to the medical reviews for both the Medicaid program and the State Children's Health Insurance Program (SCHIP) fee-for-service claims. This letter provides guidance on this policy change and the associated process for States to dispute such errors. This letter also provides clarification of when an overpayment is considered discovered under 42 CFR Part 433 Subpart F when that overpayment results from the PERM process.

Process for Dispute of Errors due to Insufficient Documentation

Generally, when documentation is missing from the medical record to support the medical review process under PERM, the provider is notified and given a 15-day timeframe to submit the missing documentation. If providers are late in submitting the missing documentation, or fail to provide the required documentation, we will cite such claims as improper payments due to insufficient documentation. The preamble to the PERM August 28, 2006 interim final rule (71 FR 51050), noted that these errors were not eligible for dispute under the difference resolution process. However, in response to public comment, the preamble to the August 31, 2007 PERM final rule permitted States to dispute insufficient documentation errors in the difference resolution process. The preamble to the final rule set forth two circumstances under which a State could dispute insufficient documentation errors and stated that we would elaborate further in our guidance. We have determined the States will not be limited to circumstances for disputing these errors and can submit missing documentation obtained from the medical records/providers. Guidelines for difference resolution will be updated to incorporate this change.

The policy related to insufficient documentation articulated in the preamble to the final rule also will apply to states measured under PERM in Fiscal Year 2006 and beyond. We expect to notify these States measured under PERM for FY 2006 of the insufficient documentation errors by no later than April 18, 2008, via the review contractor's website.

The application of this policy to FY 2006 is a one-time instance, and CMS will not consider additional situations where States can request reconsideration of errors that constitute the error rate reported in the Performance and Accountability Report (PAR). While States can request resolution of unresolved disputes or CMS appeals and can request reconsideration of errors affected by successful provider appeals, the results of these actions will not alter or otherwise revise the error rate once it is reported in the PAR.

States measured under PERM for FY 2007 and beyond will follow the regular difference resolution process set in CMS guidance whereby notification of errors is provided on a monthly basis via the review contractor's website. Difference resolution timelines can be reviewed at:

<http://www.cms.hhs.gov/PERM/Downloads/DiffResolutionProcess.pdf>

Clarification of the Discovery of an Overpayment under the PERM Process

Federal regulations at 42 CFR Part 433 Subpart F and Part 457 Subpart B require that the Federal share of any overpayments under Medicaid be refunded to the Federal government at the end of the 60-day period following the discovery of that overpayment. SCHIP overpayments are to be refunded on a quarterly basis. The regulations further specify that an overpayment identified through a Federal review is considered discovered on the date that the Federal official first notifies the State in writing of the overpayment and specifies a dollar amount subject to recovery. Under the PERM process an overpayment will be considered discovered on the date that the errors are posted to the "Final Errors for Recoveries" tab (the last tab) on the review contractor's website which can be found at:

https://smerf.healthdatainsights.com/smerf_prod/login.aspx.

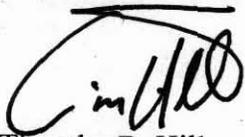
This is a secure site requiring each State's specific login and password to access. The errors posted here will take into consideration those errors that have been disputed through the difference resolution process and, if applicable, CMS appeal. This posting process will apply to Medicaid as well as SCHIP-identified errors.

The schedule for posting and identification of errors subject to Medicaid and SCHIP recovery for FY 2006 States can be found in Attachment A. For FY 2007 and beyond, all Medicaid and SCHIP errors subject to recovery will be posted on the first of every month (once reviews commence) and will be found under the "Final Errors for Recoveries" tab (the last tab) on the review contractor's website. Errors eligible for the difference resolution process will still be available under a separate tab. Additional information on the recovery of Federal matching funds can be found in Attachment B.

We appreciate the cooperation that States have afforded CMS in the implementation of the PERM program. We look forward to our continued partnership in the forthcoming years as we work to ensure the integrity of the Medicaid and SCHIP programs. If you have any questions regarding the difference resolution process and CMS appeals under PERM, please contact Christine Merenda at

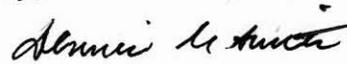
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410-786-2095. If you have any questions regarding recoveries, please contact your servicing Regional Office.



Timothy B. Hill
Director
Office of Financial Management

Sincerely,



Dennis G. Smith
Director
Center for Medicaid and State Operations

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Attachments

cc:

CMS Regional Administrators

CMS Associate Regional Administrators
for Medicaid and State Operations

CMS Associate Regional Administrators
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ATTACHMENT A

FY 2006 States

Schedule for Posting of Insufficient Documentation Errors

CMS will release all FY 2006 States insufficient documentation errors for difference resolution starting no later than April 18, 2008. States will need to access the review contractor's website, which can be found at:

https://smerf.healthdatainsights.com/smerf_prod/login.aspx.

States should review these errors to determine if they wish to agree or dispute the error. The timelines set for resolution of errors through the difference resolution process remain the same as set forth in CMS instructions. States have 10 business days to request difference resolution of an error. The RC has 15 business days to review the claim and post a decision. States have 5 business days to appeal an error to CMS. This is the optimum schedule for completing all dispute and appeal of errors leading to the successful calculation of the FY06 final error rate.

Schedule for Notification of Errors for Purposes of Recoveries

The following schedule has been established for posting of final errors on the review contractor's website for purposes of official CMS notification to States of the identification of Medicaid errors. This posting will be separately identified on the web site and will indicate the final error finding for all claims that have been through both the data processing and the medical review (if applicable) so that the total claims amount in error never exceeds 100 percent of the claim paid amount. The specific URL for the web site location is:

https://smerf.healthdatainsights.com/smerf_prod/login.aspx?ReturnUrl=%2fsmerf_prod%2fhome.aspx.

The posting of final errors for recoveries are scheduled as follows:

- May 1, 2008
- June 2, 2008
- July 1, 2008

The posting of final errors will continue on the first business day of each month until completed.

The following are examples of possible timeframes for posting of insufficient documentation errors and notification of final errors for purposes of recovery:

Example - Difference Resolution is not Requested:

An insufficient documentation error is posted on 4/14/08 and difference resolution is not requested. On 4/25/08 (10 business days later) the claim becomes a final error and will be

included in the posting on 5/1/08 through the review contractor's website; which begins the recovery of the Federal matching share.

Example – Difference Resolution is Requested:

An insufficient documentation error is posted on 4/14/08 and difference resolution is requested on 4/25/08 (10 business days). The review contractor has until 5/16/08 (15 business days) to review the claim and post a decision on its website.

Example – CMS Appeal is not Requested:

An insufficient documentation error is posted on 4/14/08 and difference resolution is requested on 4/25/08 (10 business days). The review contractor has until 5/16/08 (15 business days) to review the claim and post a decision on its website. The error is upheld and the State does not choose to appeal to CMS. On 5/23/08 (5 business days) the claim becomes a final error and will be included in the review contractor's website posting on 6/1/08; which begins the recovery of the Federal matching share.

Example – CMS Appeal is Requested:

An insufficient documentation error is posted on 4/14/08 and difference resolution is requested on 4/25/08 (10 business days). The review contractor has until 5/16/08 (15 business days) to review the claim and post a decision on its website. The error is upheld, the State chooses to appeal to CMS and files the request on 5/23/08 (5 business days). CMS will review the case, including documentation from the review contractor and the State, if applicable, and will render a decision. If the error is upheld it will become a final error and will be included in the review contractor's website posting on 7/1/08; which begins the recovery of the Federal matching share.

ATTACHMENT B

General Information for Recovery of Federal Matching Funds

The PERM program does not impose new recovery requirements on the States. Medicaid and SCHIP recovery requirements are longstanding as outlined in Federal regulations at 42 CFR 433.300 and 42 CFR 457.232 respectively, and can be viewed at:

http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/cfr_2002 and http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/cfr_2002/octqtr/pdf/42cfr457.232.pdf. Federal regulations specify the recovery of the Federal share of an overpayment in Medicaid is to be completed within 60 days of written notice by a Federal official identifying the error. The recovery of overpayments in SCHIP are to be completed in time for the next quarterly expenditure report.

For the purpose of PERM, for FY 2007 and beyond, States are considered to be officially notified by CMS of identified improper payments by the posting of Medicaid and SCHIP errors on the review contractor's website on the first business day of each month (once medical and data processing reviews commence). States will be notified by email when final errors are posted and available for viewing on the website. The website postings contain the errors that have completed the difference resolution and CMS appeals process, as applicable, and the error findings were upheld. For Medicaid, this notification begins the 60-day timeframe for recovery of overpayments on the error claims. This posting of SCHIP claims in error also serves as the official CMS notification for the recovery of overpayments in SCHIP.

After CMS notifies a State of an overpayment and recovery of the funds is partially or fully complete, a State may uncover new information regarding the error determination. A State may request to have the corresponding PERM error finding reversed and CMS recovered funds returned based on this new information. A State will need to demonstrate that:

- the provider successfully appealed the denial of payment; and,
- the claim is adjusted; and
- the results affect the review findings, i.e., the claim has both a medical review and data processing errors and would not remain in error due to the data processing error.

When requesting to have an error finding reversed, States must submit to CMS documentation that includes the reason for the overpayment, why the provider won the appeal, and the dollar amount of the appeal award. CMS will reverse the error from the State's error rate, so long as the process can be completed earlier than 45 days before the error rate is calculated, i.e., by July 15th. All PERM error findings not resolved through difference resolution and/or CMS appeals by July 15th are considered final errors.

After the final error rates are completed, States may continue to request resolution of unresolved error findings, and a recalculation of the State specific error rate incorporating the disposition of the reversed findings. The request for recalculating the error rate must be made within 60 business days of the posting date of the State's program error rate on the review contractor's

website. For more details, please refer to the *PERM Difference Resolution Process* instructions on the PERM website at <http://www.cms.hhs.gov/PERM/Downloads/DiffResolutionProcess.pdf>.