MEMORANDUM

DATE: October 28, 2011

TO: Ms. Sharon L. Summers, DMMA Planning & Policy Development Unit

FROM: Wendy, Strauss, Vice-Chairperson State Council for Persons with Disabilities

RE: 15 DE Reg. 448 [DMMA Proposed Payment Error Rate Measurement Regulation]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance’s (DMMA’s) proposal to adopt a federal option in the context of analysis of excess Medicaid and CHIP payments. The regulation was published as 15 DE Reg. 448 in the October 1, 2011 issue of the Register of Regulations.

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

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

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

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our observations or position on the proposed regulation.

cc: Ms. Rosanne Mahaney
    Mr. Brian Hartman, Esq.
    Governor’s Advisory Council for Exceptional Citizens
    Developmental Disabilities Council
B. The Improper Payments Information Act of 2002

The Improper Payments Information Act of 2002 (IPIA), Pub.L. 107-300, enacted on November 25, 2002 requires the heads of Federal agencies to annually review programs they oversee to determine if they are susceptible to significant erroneous payments. If any programs are found to be susceptible to significant improper payments, then the agency must estimate the amount of improper payments, report on actions the agency is taking to reduce improper payments, and submit a report on actions the agency is taking to reduce erroneous expenditures. The IPIA directed the Office of Management and Budget (OMB) to provide guidance on implementation. OMB defines "significant erroneous payments" as annual erroneous payments in the program exceeding both 2.5 percent of program payments and $10 million (OMB M-06-23, Appendix C to OMB Circular A-123, August 10, 2006). For those programs found to be susceptible to significant erroneous payments, Federal agencies must provide the estimated amount of improper payments and report on the actions the agency is taking to reduce them, including setting targets for future erroneous payment levels and a timeline by which the targets will be reached.

The Medicaid program and the Children's Health Insurance Program (CHIP) were identified as programs at risk for significant erroneous payments. The Department of Health and Human Services (DHHS) reports the estimated error rates for the Medicaid and CHIP programs in its annual Agency Financial Report (AFR) to Congress.

C. Regulatory History

1. Medicaid Eligibility Quality Control Program

The Medicaid Eligibility Quality Control (MEQC) program is set forth in Sections 1902(a)(27) of the Act and requires States to report to the Secretary the ratio of States' erroneous excess payments for medical assistance to total expenditures for medical assistance. Section 1902(a)(27) of the Act sets forth provisions for all States to annually estimate improper payments and to report on actions the agency is taking to reduce erroneous expenditures. Under the authority of these provisions, we published a proposed rule in the August 27, 2004 Federal Register (69 FR 52620) to comply with the requirements of the IPIA and the OMB guidance. The proposed rule set forth provisions for all States to annually estimate improper payments in their Medicaid and CHIP programs and to report the State-specific error rates for purposes of our computing the national improper payment estimate.

In the October 5, 2005 Federal Register (70 FR 58250), we published an interim final rule with comment period (IFC). The IFC responded to public comments on the proposed rule, and informed the public of our national contracting strategy and of our plan to measure improper payments in a subset of States. Our State selection process ensures that a State is measured once, and only once, every 3 years for each program.

In response to the public comments from the October 5, 2005 IFC, we published a second IFC in the August 28, 2006 Federal Register (71 FR 52620). The IFC reiterated our national contracting strategy to estimate improper payments in both Medicaid and CHIP fee-for-service (FFS) and managed care, and set forth and invited further comments on State requirements for estimating improper payments due to errors in Medicaid and CHIP eligibility determinations. We also announced that a State's Medicaid and CHIP programs would be reviewed in the same year.

In the August 31, 2007 Federal Register (72 FR 50490), we published a final rule for the PRM program, which implements the IPIA requirements. The August 31, 2007 final rule responded to the public comments on the August 28, 2006 IFC and finalized State requirements for submitting claims to the Federal contractors that conduct FFS reviews.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Medicare & Medicaid Services
42 CFR Parts 431, 447, and 457
(CMS-6150-P)

RIN 0938-AP69

Medicaid Program and Children's Health Insurance Program (CHIP);
Revisions to the Medicaid Eligibility Quality Control and Payment Error Rate Measurement Programs

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule implements provisions from the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) (Pub. L. 111-152) with regard to the Medicaid Eligibility Quality Control (MEQC) and Payment Error Rate Measurement (PERM) programs. This final rule also codifies several procedural aspects of the process for estimating improper payments in Medicaid and the Children's Health Insurance Program (CHIP).

DATES: Effective Date: These regulations are effective on September 10, 2010.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lindner, (410) 786-7481. Jessica Woodard, (410) 786-9249.

SUPPLEMENTARY INFORMATION:

I. Background

A. Medicaid Eligibility Quality Control Program

The Medicaid Eligibility Quality Control (MEQC) program is set forth in Sections 1902(a)(27) of the Act and requires States to report to the Secretary the ratio of States' erroneous excess payments for medical assistance to total expenditures for medical assistance. Section 1902(a)(27) of the Act sets forth provisions for all States to annually estimate improper payments and to report on actions the agency is taking to reduce erroneous expenditures. Currently, the MEQC program consists of programs at risk for significant erroneous payments. The Department of Health and Human Services (DHHS) reports the estimated error rates for the Medicaid and CHIP programs in its annual Agency Financial Report (AFR) to Congress.

2. Payment Error Rate Measurement (PERM) Program

Section 1902(a) of the Act authorizes the Secretary to establish such rules and regulations as may be necessary for the efficient administration of the Medicaid and CHIP programs. The Medicaid statute at section 1902(a)(27) of the Act and the CHIP statute at section 2107(b)(1) of the Act require States to provide information that the Secretary finds necessary for the administration, evaluation, and verification of the States' programs. Also, section 1902(d)(27) of the Act (and § 457.950 of the regulations) requires providers to submit information regarding payments and claims as requested by the Secretary, State agency, or both. Under the authority of these provisions, we published a proposed rule in the August 27, 2004 Federal Register (69 FR 52620) to comply with the requirements of the IPIA and the OMB guidance. The proposed rule set forth provisions for all States to annually estimate improper payments in their Medicaid and CHIP programs and to report the State-specific error rates for purposes of our computing the national improper payment estimate.

In the October 5, 2005 Federal Register (70 FR 58250), we published an interim final rule with comment period (IFC). The IFC responded to public comments on the proposed rule, and informed the public of our national contracting strategy and of our plan to measure improper payments in a subset of States. Our State selection process ensures that a State is measured once, and only once, every 3 years for each program.

In response to the public comments from the October 5, 2005 IFC, we published a second IFC in the August 28, 2006 Federal Register (71 FR 52620). The IFC reiterated our national contracting strategy to estimate improper payments in both Medicaid and CHIP fee-for-service (FFS) and managed care, and set forth and invited further comments on State requirements for estimating improper payments due to errors in Medicaid and CHIP eligibility determinations. We also announced that a State's Medicaid and CHIP programs would be reviewed in the same year.

In the August 31, 2007 Federal Register (72 FR 50490), we published a final rule for the PRM program, which implements the IPIA requirements. The August 31, 2007 final rule responded to the public comments on the August 28, 2006 IFC and finalized State requirements for submitting claims to the Federal contractors that conduct FFS reviews.
findings, and payment review findings conducted in accordance with §431.978 of this part for data required in this section, if the only
determination is that the risk of any particular design.
§431.978(d)(1) of this part.
(2) PERM cases cited as undetermined may be dropped when calculating
MBQC error rates if reasons for drops are not susceptible to audit.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.
§431.978(e)(1) of this part.