



October 31, 2006

Leslie V. Norwalk, Esq.
Acting Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Ms. Norwalk:

The American Public Human Services Association (APHSA) and its affiliates, the National Association of State Medicaid Directors (NASMD) and the National Association for Program Information and Performance Measurement (NAPIPM), respectfully request that the Centers for Medicare and Medicaid Services (CMS) work with the states to resolve some fundamental components of the Payment Error Rate Measurement (PERM) endeavor that we believe threaten the goals and results that CMS hopes to achieve through this initiative. States wish to work with CMS toward reasonable efforts to support program integrity, and we have attempted to utilize all the tools available to us during the official regulatory development period to provide constructive input to strengthen the initiative. However, as states begin the second cycle of the PERM program, APHSA wishes to raise three new and significant challenges and to propose alternatives which we believe must be considered.

First, we remain concerned that CMS has not thoroughly considered a number of the essential factors impacting PERM eligibility reviews as we discuss below. We believe this necessitates a delay in the implementation of this process. In addition, in the period between the October 5, 2005, interim final rule, the May 26, 2006, Information Collection Notice, and most recent August 28, 2006, interim final rule, CMS made a number of significant decisions and changes that in turn will require states to make unexpected, significant changes in their resource allocation to this effort. Again, a delay in the eligibility component will help states better anticipate the fiscal impact of this mandate and provide states and CMS with an opportunity to think collaboratively about resolutions to the remaining challenges and unanswered questions. Finally, CMS' communication with states to date falls far short of what is necessary to successfully implement this initiative. We hope you will agree that this can be resolved simply by improving the lines of communication, both in terms of frequency of contact with states and in the scope of information that is provided.

The eligibility portion of PERM appears to encompass a number of strategies that make it exceptionally difficult to carry out our shared mission. While we applaud the recognition by CMS of tight timeframes and the abbreviated nine-month duration of the eligibility review period for 2007, we believe far more needs to be done for PERM eligibility to succeed in its first year.

On May 26, 2006, CMS issued an information collection notice and a supporting statement for PERM eligibility regulations that would have required states to conduct approximately 501 active case eligibility reviews and 201 negative reviews in either Medicaid or the State Children's Health Insurance Program (SCHIP) in a cycle of two of every three years. Additionally, these documents discussed a proposal that offered states the option of substituting Medicaid Eligibility Quality Control (MEQC) reviews for PERM reviews if a state adjusted MEQC sampling to match PERM precision standards. While some states were concerned that they would have to opt for MEQC and risk sanction liabilities if their error rates exceeded the statutory 3 percent, others presumed that PERM as an MEQC "pilot" might also be a possibility. Regardless of which options or possibilities CMS chooses to permit, it appeared to the states that budgetary impacts and the burdens associated with duplication might be minimized. A number of states projected modest staffing increases for the two years that the PERM eligibility reviews would be conducted and envisioned reassigning PERM eligibility staff to other Medicaid eligibility accuracy projects in the third year of the PERM cycle.

Given the direction in which CMS seemed to be moving as of the May 2006 notifications, the assurance that CMS was attempting to minimize the burden on states, and the lack of any communication otherwise, states did not plan for circumstances that would cause a reassignment of staff from other critical duties or require state legislative budget amendments.

When the interim final regulation was published on August 28, 2006, states learned that the minimized burdens previewed months earlier had been multiplied in several ways. The most recent interim final regulation in contrast to the earlier guidance, requires states to conduct both SCHIP and Medicaid active and negative reviews in the same year, doubling active case reviews from 501 to 1,008 and negative reviews from 201 to 408. Second, states also are not permitted to substitute MEQC for PERM, thereby further increasing the burden on states. Another hurdle for states also appeared in the interim final regulation when CMS announced that "...the agency conducting the PERM eligibility reviews must be functionally and physically separate and independent from the state agency responsible for Medicaid and SCHIP policy and operations, including eligibility determinations." Such a requirement is neither necessary nor a prudent investment of scarce state dollars.

These increased impacts cannot be absorbed by states without diversion of critical resources from other important program areas or without budget supplements. Most states already face budget austerity in their health and human service funding. The prospect of

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approaching state legislatures for budget supplements outside the normal budget cycle is not feasible.

We note that the multiplied burdens detailed above were paired with an option to contract for PERM eligibility. This was presented in the information collection notice of September 1, 2006. Although states appreciate this option, it is unlikely to be feasible for most states given the altered PERM eligibility landscape published in the August 26, 2006, interim final regulations, and given that the contract acquisition process is lengthy for states and the budgetary impacts remain.

Finally, states are concerned with the timing and method by which CMS is communicating with states as well as the scope of information that is being provided. Many of the front-line staff engaged in the PERM process for states selected for year 2 were given a mere 24-hour notice of CMS's "kick-off" conference call. Although APHSA is happy to assist in this effort, we are concerned that for some of these key staff, for example those involved in the SCHIP reviews and in state performance measurement oversight, the notification they received from our organization was the *only* notice they had of this call. Further, CMS has consistently limited the participation of states on these calls, which we believe is detrimental to the states involved in this year's process as well as other states who are interested in learning more about the PERM initiative. There is no supportable reason for CMS to withhold this vital information from other interested states and other relevant stakeholders.

As noted earlier, APHSA believes there are steps CMS can take to ensure that the PERM eligibility component is implemented in a way that will help CMS to obtain the most accurate information possible while minimizing the burden to states. First, CMS should postpone PERM eligibility reviews until fiscal year 2009. Then CMS, working in partnership with states, could use this time to address the unanswered questions and challenges states have raised with several aspects of the interim final rule. These challenges could best be addressed through an advisory committee. A PERM advisory group, with a substantial representation of states, would be a prudent, effective, and valuable resource to CMS, federal contractors, and the states. This advisory group need not be permanent, but it should be in place for at least through FY 2009, through the first complete cycle of PERM projects.

In addition, CMS should work quickly with states to modify several components of the regulations to reduce the logistical, budgetary, and organizational barriers cited above. For example, CMS should remove the "independence" requirement from the eligibility regulations. Requiring an independent entity perform the PERM eligibility reviews will unnecessarily increase costs and provide no measurable benefit over having the reviews performed within the Medicaid agency. Federal regulations allow the state agency responsible for Medicaid policy and operations to perform the MEQC reviews. It is unclear why CMS has concluded that there could be a conflict of interest with PERM reviews, but not with MEQC reviews. Furthermore, CMS should make the appropriate regulatory changes to allow MEQC traditional or pilot states to convert to MEQC

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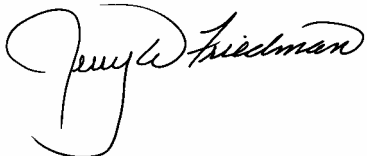
“PermPilot” status for the Perm eligibility review year. Requiring States maintain two eligibility review systems results in a duplication of effort and overburdens the States with redundant processes and increased cost.

Additional components requiring modification include estimates for the sampling parameters sampling size and reporting requirements. However, more importantly, even if no substantial modifications were made, if CMS postponed PERM eligibility reviews until fiscal year 2009, states would have the time to plan staffing, acquire budgetary support from their state legislatures, and program the exceedingly challenging sampling requirements. In the event CMS is unable to postpone PERM eligibility reviews until fiscal year 2009, CMS should take steps to minimize the financial burden placed on states by funding the first cycle of eligibility reviews with 100 percent federal funding.

As you know, APHSA raised significant questions and objections regarding the need for PERM and CMS’ authority to impose this substantial new and unfunded mandate on states. With PERM now a reality, we must insist that at the least, CMS should take all possible steps to make PERM as reasonable a requirement as possible; to work with us as equal partners in this undertaking; and to communicate with us openly, clearly, and frequently. These are simple requests that we believe would serve the interests of all stakeholders in this process.

States are eager to continue and expand this dialogue with CMS. We would be happy to meet with you at any time to provide any additional information that may be helpful. If you have any questions, please do not hesitate to contact me or Elaine Ryan at (202) 682-0100, ext. 235.

Sincerely,



Jerry W. Friedman
Executive Director



Nancy Atkins
Chair, NASMD Executive Committee

Cc:

Senator Charles Grassley
Chairman
Senate Finance Committee

Senator Max Baucus
Ranking Member
Senate Finance Committee

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Congressman Joe Barton
Chairman
House Energy and Commerce Committee

Congressman John Dingell
Ranking Member
House Energy and Commerce Committee

Congressman Nathan Deal
Chairman
Subcommittee on Health, House Energy and Commerce Committee

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