

STATE OF COLORADO

DEPARTMENT OF HEALTH CARE POLICY AND FINANCING

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Bill Owens
Governor

Stephen C. Tool
Executive Director

January 1, 2006

The Honorable Tom Plant, Chairman
Joint Budget Committee
200 East 14th Avenue, Third Floor
Denver, CO 80203

Dear Representative Plant:

Enclosed please find a report to the Joint Budget Committee on the Payment Error Rate Measurement (PERM) Program Update, pursuant to Footnote 33 of Senate Bill 05-209.

Questions regarding the PERM Project Update can be addressed to Margaret Mohan, Program Integrity Manager, Margaret.Mohan@state.co.us. Her telephone number is (303)866-5421.

Sincerely,

Stephen C. Tool
Executive Director

MM:bmf

Enclosure

"The mission of the Department of Health Care Policy & Financing is to purchase cost effective health care for qualified, low-income Coloradans"

<http://www.chcpf.state.co.us>

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**COLORADO DEPARTMENT OF HEALTH CARE
POLICY AND FINANCING**

Report to the Joint Budget Committee

PERM PROJECT UPDATE

JANUARY 1, 2006

EXECUTIVE SUMMARY

This report is presented to the Joint Budget Committee of the Colorado General Assembly in response to footnote 33 of Senate Bill 05-209, regarding the Payment Error Rate Measurement (PERM) Project. This report provides information on the status of the pilot study portion of the PERM Project conducted in 2005 and includes the number of claims reviewed, the preliminary findings regarding the payment error rate associated with those claims, the amount of any funding anticipated to be recouped and anticipated corrective actions.

The purpose of the PERM Project is for states to assist the Centers for Medicare and Medicaid Services (CMS) in estimating improper payments in Medicaid and the State Children's Health Insurance Programs (SCHIP), as required under the Improper Payments Information Act of 2002 (IPIA). The IPIA requires federal agencies to annually estimate and report to Congress estimates of improper payments for the programs they oversee and, submit a report on actions the agency is taking to reduce erroneous payments. The Office of Management and Budget (OMB) identified 49 programs within 15 federal departments as programs for which erroneous payment information is required. Medicaid and the SCHIP were two of seven programs under the U.S. Department of Health and Human Services identified by the OMB.

CMS utilized grant funding to solicit state participation in the Payment Accuracy Measurement (PAM) and PERM pilot projects in federal fiscal years (FFY) 2002 through 2005. The pilot projects developed the foundation for the sampling and reporting methodology to be utilized to meet the federal reporting requirements.

FFY 2005 is the second year of the Department of Health Care Policy and Financing's (the Department) participation in the pilot projects. This year's pilot testing involved a small sample size of 150 paid claim line items for each the Medicaid program and the Children's Basic Health Plan (CBHP) program. It included Medicaid fee for service (FFS) and managed care claims as well as the CBHP managed care components. Selected line items were reviewed for potential errors related to processing, medical record reviews and a sub-sample for eligibility determinations. Since the findings have not been finalized, the preliminary results are summarized in this report.

An interim final regulation was published in the October 5, 2005 Federal Register concerning the future of the PERM Project. The paramount differences from those announced in the draft regulation August of 2004 and the October 5, 2005 interim final regulation, are the use of federal contractor(s), one of which will perform the processing and medical record review aspects of the project rather than each state doing these aspects. A three year rotation is planned so only one third of the states will be participating in the sampling and review aspect each year. The interim regulation does not address eligibility reviews, which are to be added in later years of the project. CBHP and Medicaid managed care claims are also not included in the initial year of the requirement, but are anticipated to be included in later years. Additional regulations will be forthcoming regarding those aspects. States selected for participation in FFY 2006 are to be notified in November 2005. Colorado was notified on November 16, 2005 that it will be participating in FFY 2007 not FFY 2006.

INTRODUCTION

Footnote 33 of Senate Bill 05-209 states:

Department of Health Care Policy and Financing, Executive Director's office, Payment Error Rate Measurement Program – Both the Medicaid Prescription Drug Program Performance Audit (September 2004) and Medicaid Claims Performance Audit (December 2003) identified circumstances where the Department was over paying providers for Medicaid Services. In addition, the Centers for Medicare and Medicaid Services will require that the states enact payment error rate measurement programs by October 1, 2005. In order to improve the accuracy of Medicaid payments the General Assembly provides this appropriation for a statistical sampling of billing claims for the Medicaid and Children's Basic Health Plan program to ensure that proper reimbursement payments are made. It is the intent of the General Assembly that a portion of the cost of this contract be paid from a reduction in claims payments from the Medical Services Premiums line item either through recoupment of overpayments or through system changes that correct improper billing amounts before the claims are paid. Therefore beginning January in 2006, the Department is requested to provide the Joint Budget Committee with a quarterly report providing information on the number of claims reviewed, the payment error rate associated with those claims and the amount of any funding, if any, recouped from implemented corrective actions.

The Governor vetoed footnote 33 stating:

This footnote is in violation of the Colorado Constitution, Article III, because it interferes with the ability of the executive branch to administer the appropriation. In addition, this footnote may violate Article V, Section 32 because it constitutes substantive legislation that cannot be included in the general appropriations bill. I will direct the department to comply to the extent feasible.

PROGRAM OVERVIEW

The Improper Payments Information Act of 2002 (IPIA), Public Law 107-300, enacted on November 26, 2002, requires the administrators of federal agencies to annually review programs they oversee that are susceptible to significant erroneous payments to estimate the amount of improper payments, to report those estimates to the Congress, and to 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 subsequent guidance. 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-03-13, 05/21/03). For those programs with significant erroneous payments, federal agencies must provide the estimated amount of improper payments and report on what 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. Federal agencies must include: (1) The estimate of the annual amount of erroneous

payments; (2) a discussion of the causes of the errors and actions taken to correct those causes; (3) a discussion of the amount of actual erroneous payments the agency expects to recover; and (4) limitations that prevent the agency from reducing the erroneous payment levels, that is, resources or legal barriers.

The Medicaid and SCHIP programs were identified by OMB as programs at risk for significant erroneous payments. OMB has directed the U.S. Department of Health and Human Services (DHHS) to report the estimated error rate for the Medicaid and SCHIP programs to OMB by November 15 of each year.

There was no systematic means of measuring payment errors at the state and national levels for Medicaid and SCHIP. Through the Payment Accuracy Measurement (PAM) and PERM pilot projects that operated in FFYs 2002 through 2005, it was determined that it is feasible to estimate improper payments for Medicaid and SCHIP and refined a claims-based review methodology. This methodology was designed to estimate state specific payment error rates within +/-3 percent of the true population error rate with 95 percent confidence. Through weighted aggregation, the state specific estimates can be used to make national level error rate estimates for Medicaid and SCHIP which will meet OMB's confidence and precision requirements.

CMS posted a draft regulation for comment in August 2004 that set forth requirements for state agencies to produce improper payment estimates for their Medicaid and SCHIP programs, identify emerging vulnerabilities and produce a corresponding increase in program savings. The draft regulation spelled out specific requirements for each state to sample approximately 1,000 claim line items each year for their Medicaid program and 1,000 claim line items for their CBHP program. Each sampled claim line item would undergo a processing, medical record and eligibility review. The draft regulation outlined an ongoing monthly sampling methodology to be used to provide an estimate of an annual total improper payment error rate. CMS estimated the costs based on 1,000 claims as follows: \$570 per eligibility review, \$300 per claims review (data processing and medical review), and \$155 standard administrative cost. Based on those estimates the total annual state and federal costs to conduct the PERM Project would range for \$1 to \$2 million per state, per program.

Comments from states and concerned parties led CMS to post an interim final regulation, on October 5, 2005. The interim final regulation significantly departed from the approach outlined in the draft regulation. CMS will engage federal contractor(s) to produce the error rate, rather than requiring each state to produce their own error rates. Only one third of the states will participate each year rather than all states each year. CMS anticipates producing a Medicaid FFS only, error rate for the FFY 2007 Performance and Accountability Report (PAR) based on reviews conducted in FFY 2006. In FFY 2007 CMS expects to measure improper payments in the FFS, managed care and eligibility components of Medicaid and SCHIP programs to be reported in the 2008 PAR. Colorado has been selected to participate in the FFY 2007.

ANALYSIS

The PERM pilot project of 2005 reviewed 150 Medicaid and 150 CBHP line item paid claims. The sample included denied claims, Medicare crossover and Medicare premium claims, which had been excluded from prior years. Of the 150 Medicaid claims, 123 were FFS claims and 27 managed care claims. All 150 CBHP claims were managed care claims. A sub-sample of 50 claims from the Medicaid sample and 50 claims from CBHP sample were selected for an eligibility review in addition the processing and medical record reviews. The dates under review were October 1, 2004 through December 31, 2004, which happened to coincide with the initiation of the Colorado Benefit Management System (CBMS).

There have been nine medical record review errors identified in the Medicaid FFS population and one in the Medicaid managed care area, which was an underpayment. Eligibility reviews have not been completed and the CBHP results have not been finalized. Therefore overall dollar value error rates are not available at this time. An estimated amount of total fund overpayments for which recovery could be sought is \$5,000 for the nine medical record errors.

Errors identified as a result of eligibility determinations are not subject to recoupment of overpayment, as improper payments based on eligibility determinations are subject to recovery under section 1903(u) of the Social Security Act (Act) and 42 CFR part 433, subpart F. Thus, PERM identified improper payments due to eligibility determination are not subject to recovery. Results of the PERM Project reviews including eligibility reviews, CBHP and Medicaid Managed Care reviews are anticipated to be completed and report finalized by December 31, 2005.

Future legislative footnote reports will include the final results of the pilot study portion of the PERM Project conducted in 2005 as well as activities related to recouping overpayments and any corrective action plans implemented.

FUTURE ACTIVITIES

The interim final regulation posted October 5, 2005 drastically changes the Department's plans to meet the federal requirements. Contracting with an external contractor to perform approximately 1,000 Medicaid and 1,000 CBHP reviews will not be necessary. The anticipated budgetary expenses of over \$1 million to perform these activities in State Fiscal Year (SFY) 2005-06 or nearly \$1.5 million for subsequent years will not be necessary.

The interim final regulation outlines the use of federal contractor(s) to review eighteen states per year for each Medicaid and CBHP programs. CMS plans to engage three contractors, a statistical contractor for sampling and error rate calculations, a documentation/database contractor to gather policies and other necessary information from the states as well as medical records from the providers, and a review contractor to perform processing and medical record reviews. The Department's plan is being revised to meet the requirements outlined in the interim final regulation, to comply with the federal contractor(s) requests.

The posted interim final regulation indicates that one third of the states will be randomly sampled to participate in the Medicaid FFS review for FFY 2006. Selected states were notified in November 2005. Colorado is selected to participate in FFY 2007 (October 1, 2006 through September 30, 2007) on the Medicaid aspect of the project. CBHP participating states will be announced at a later date. A PERM Project coordinator will be necessary to meet the requirements for the FFY 2007 review year. Approval has been given for a 1.0 FTE position dedicated to PERM Project activities. The position and responsibilities would be similar to those involved in coordinating external audits conducted on the Department.

This position will solicit the resources necessary from a variety of program personnel for the accurate and timely provision of the necessary information. The position will also work with the federal contractor(s) to coordinate requests, clarify any interpretation of policy questions and assist with understanding all claims data and coding provided from a variety of sources. Although not clearly defined in the interim final regulation it is anticipated that this position will have the opportunity to dispute any claims found to have been made in error, prior to arriving at the final error rate. Upon receipt of the federal contractor(s) findings it is anticipated that the position will develop a corrective action plan with the assistance of appropriate program staff. The type of information that will be requested from the federal contractor will include but is not limited to:

- Previous year's claims data;
- Adjudicated and stratified claims on a quarterly basis;
- All medical policies in effect and quarterly policy updates to support the medical reviews;
- Provider contact information so that the contractor can request medical documentation to support the medical reviews;
- Systems manuals for data processing reviews;
- Access to claims payment systems for data processing reviews;
- Technical assistance necessary for the contractor to complete the reviews;
- Repricing of claims; and
- For claims selected for review that are in the appeals process, information on the outcome of the claims process, including approval, denial, or adjustment of claims.

The solicitation for the federal contractor indicates that the federal review contractor will conduct the data processing reviews on site for each state selected, visiting each state between two and five times. The Department's PERM Project coordinator would need to coordinate these visits, assure accessibility to the fiscal agent and adequate space for reviewers to conduct reviews.

Following receipt of the results from the federal contractor(s) and proceeding into the years when the Department is not actively participating in the sampling and review activities, it is anticipated

that this position would be responsible for the development of an error rate reduction report or corrective action plan that addresses actions to be taken to reduce the causes of the state's error rate. Additionally, this position would be responsible for staying current on PERM Project developments, posting of future regulations and their impact, and working with any joint state ventures that may develop.

The interim final regulation posted October 5, 2005, significantly altered the Department's plans and financial needs to meet the requirements for PERM Project related review activities in 2006 forward. The Department will comply with all posted requirements and will comply with all requests from the federal contractor(s). Plans for future year participation and responsibilities will be modified as necessary to meet additional regulations as they are posted.