

this section [amending this section] shall be construed as—

“(1) changing any income eligibility level for children under title XXI of the Social Security Act [42 U.S.C. 1397aa et seq.]; or

“(2) changing the flexibility provided States under such title to establish the income eligibility level for targeted low-income children under a State child health plan and the methodologies used by the State to determine income or assets under such plan.”

PAYMENT ERROR RATE MEASUREMENT REQUIREMENTS

Pub. L. 111-3, title VI, §601(b)–(g), Feb. 4, 2009, 123 Stat. 96-98, as amended by Pub. L. 111-309, title II, §205(c), Dec. 15, 2010, 124 Stat. 3290, provided that:

“(b) FINAL RULE REQUIRED TO BE IN EFFECT FOR ALL STATES.—Notwithstanding parts 431 and 457 of title 42, Code of Federal Regulations (as in effect on the date of enactment of this Act [Feb. 4, 2009]), the Secretary shall not calculate or publish any national or State-specific error rate based on the application of the payment error rate measurement (in this section referred to as ‘PERM’) requirements to CHIP until after the date that is 6 months after the date on which a new final rule (in this section referred to as the ‘new final rule’) promulgated after the date of the enactment of this Act [Feb. 4, 2009] and implementing such requirements in accordance with the requirements of subsection (c) is in effect for all States. Any calculation of a national error rate or a State specific error rate after such new final rule in effect for all States may only be inclusive of errors, as defined in such new final rule or in guidance issued within a reasonable time frame after the effective date for such new final rule that includes detailed guidance for the specific methodology for error determinations. The Secretary is not required under this subsection to calculate or publish a national or a State-specific error rate for fiscal year 2009 or fiscal year 2010.

“(c) REQUIREMENTS FOR NEW FINAL RULE.—For purposes of subsection (b), the requirements of this subsection are that the new final rule implementing the PERM requirements shall—

“(1) include—

“(A) clearly defined criteria for errors for both States and providers;

“(B) a clearly defined process for appealing error determinations by—

“(i) review contractors; or

“(ii) the agency and personnel described in section 431.974(a)(2) of title 42, Code of Federal Regulations, as in effect on September 1, 2007, responsible for the development, direction, implementation, and evaluation of eligibility reviews and associated activities; and

“(C) clearly defined responsibilities and deadlines for States in implementing any corrective action plans; and

“(2) 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 or self-certification of eligibility for, and the correct amount of, medical assistance or child health assistance, if the State process for verifying an applicant’s self-declaration or self-certification satisfies the requirements for such process applicable under regulations promulgated by the Secretary or otherwise approved by the Secretary.

“(d) OPTION FOR APPLICATION OF DATA FOR STATES IN FIRST APPLICATION CYCLE UNDER THE INTERIM FINAL RULE.—After the new final rule implementing the PERM requirements in accordance with the requirements of subsection (c) is in effect for all States, a State for which the PERM requirements were first in effect under an interim final rule for fiscal year 2007 or under a final rule for fiscal year 2008 may elect to accept any payment error rate determined in whole or in part for the State on the basis of data for that fiscal year or may elect to not have any payment error rate

determined on the basis of such data and, instead, shall be treated as if fiscal year 2010 or fiscal year 2011 were the first fiscal year for which the PERM requirements apply to the State.

“(e) HARMONIZATION OF MEQC AND PERM.—

“(1) REDUCTION OF REDUNDANCIES.—The Secretary shall review the Medicaid Eligibility Quality Control (in this subsection referred to as the ‘MEQC’) requirements with the PERM requirements and coordinate consistent implementation of both sets of requirements, while reducing redundancies.

“(2) STATE OPTION TO APPLY PERM DATA.—A State may elect, for purposes of determining the erroneous excess payments for medical assistance ratio applicable to the State for a fiscal year under section 1903(u) of the Social Security Act (42 U.S.C. 1396b(u)) to substitute data resulting from the application of the PERM requirements to the State after the new final rule implementing such requirements is in effect for all States for data obtained from the application of the MEQC requirements to the State with respect to a fiscal year.

“(3) STATE OPTION TO APPLY MEQC DATA.—For purposes of satisfying the requirements of subpart Q of part 431 of title 42, Code of Federal Regulations, relating to Medicaid eligibility reviews, a State may elect to substitute data obtained through MEQC reviews conducted in accordance with section 1903(u) of the Social Security Act (42 U.S.C. 1396b(u)) for data required for purposes of PERM requirements, but only if the State MEQC reviews are based on a broad, representative sample of Medicaid applicants or enrollees in the States.

“(f) IDENTIFICATION OF IMPROVED STATE-SPECIFIC SAMPLE SIZES.—The Secretary shall establish State-specific sample sizes for application of the PERM requirements with respect to State child health plans for fiscal years beginning with the first fiscal year that begins on or after the date on which the new final rule is in effect for all States, on the basis of such information as the Secretary determines appropriate. In establishing such sample sizes, the Secretary shall, to the greatest extent practicable—

“(1) minimize the administrative cost burden on States under Medicaid and CHIP; and

“(2) maintain State flexibility to manage such programs.

“(g) TIME FOR PROMULGATION OF FINAL RULE.—The final rule implementing the PERM requirements under subsection (b) shall be promulgated not later than 6 months after the date of enactment of this Act [Feb. 4, 2009].”

[For definitions of “CHIP”, “Medicaid”, and “Secretary”, see section 1(c) of Pub. L. 111-3, set out as a Definitions note under section 1396 of this title.]

§ 1397ff. Process for submission, approval, and amendment of State child health plans

(a) Initial plan

(1) In general

As a condition of receiving payment under section 1397ee of this title, a State shall submit to the Secretary a State child health plan that meets the applicable requirements of this subchapter.

(2) Approval

Except as the Secretary may provide under subsection (e) of this section, a State plan submitted under paragraph (1)—

(A) shall be approved for purposes of this subchapter, and

(B) shall be effective beginning with a calendar quarter that is specified in the plan, but in no case earlier than October 1, 1997.

(b) Plan amendments**(1) In general**

A State may amend, in whole or in part, its State child health plan at any time through transmittal of a plan amendment.

(2) Approval

Except as the Secretary may provide under subsection (e) of this section, an amendment to a State plan submitted under paragraph (1)—

(A) shall be approved for purposes of this subchapter, and

(B) shall be effective as provided in paragraph (3).

(3) Effective dates for amendments**(A) In general**

Subject to the succeeding provisions of this paragraph, an amendment to a State plan shall take effect on one or more effective dates specified in the amendment.

(B) Amendments relating to eligibility or benefits**(i) Notice requirement**

Any plan amendment that eliminates or restricts eligibility or benefits under the plan may not take effect unless the State certifies that it has provided prior public notice of the change, in a form and manner provided under applicable State law.

(ii) Timely transmittal

Any plan amendment that eliminates or restricts eligibility or benefits under the plan shall not be effective for longer than a 60-day period unless the amendment has been transmitted to the Secretary before the end of such period.

(C) Other amendments

Any plan amendment that is not described in subparagraph (B) and that becomes effective in a State fiscal year may not remain in effect after the end of such fiscal year (or, if later, the end of the 90-day period on which it becomes effective) unless the amendment has been transmitted to the Secretary.

(c) Disapproval of plans and plan amendments**(1) Prompt review of plan submittals**

The Secretary shall promptly review State plans and plan amendments submitted under this section to determine if they substantially comply with the requirements of this subchapter.

(2) 90-day approval deadlines

A State plan or plan amendment is considered approved unless the Secretary notifies the State in writing, within 90 days after receipt of the plan or amendment, that the plan or amendment is disapproved (and the reasons for disapproval) or that specified additional information is needed.

(3) Correction

In the case of a disapproval of a plan or plan amendment, the Secretary shall provide a State with a reasonable opportunity for correction before taking financial sanctions

against the State on the basis of such disapproval.

(d) Program operation**(1) In general**

The State shall conduct the program in accordance with the plan (and any amendments) approved under subsection (c) of this section and with the requirements of this subchapter.

(2) Violations

The Secretary shall establish a process for enforcing requirements under this subchapter. Such process shall provide for the withholding of funds in the case of substantial noncompliance with such requirements. In the case of an enforcement action against a State under this paragraph, the Secretary shall provide a State with a reasonable opportunity for correction before taking financial sanctions against the State on the basis of such an action.

(e) Continued approval

An approved State child health plan shall continue in effect unless and until the State amends the plan under subsection (b) of this section or the Secretary finds, under subsection (d) of this section, substantial noncompliance of the plan with the requirements of this subchapter.

(Aug. 14, 1935, ch. 531, title XXI, §2106, as added Pub. L. 105-33, title IV, §4901(a), Aug. 5, 1997, 111 Stat. 563.)

§ 1397gg. Strategic objectives and performance goals; plan administration**(a) Strategic objectives and performance goals****(1) Description**

A State child health plan shall include a description of—

- (A) the strategic objectives,
- (B) the performance goals, and
- (C) the performance measures,

the State has established for providing child health assistance to targeted low-income children under the plan and otherwise for maximizing health benefits coverage for other low-income children and children generally in the State.

(2) Strategic objectives

Such plan shall identify specific strategic objectives relating to increasing the extent of creditable health coverage among targeted low-income children and other low-income children.

(3) Performance goals

Such plan shall specify one or more performance goals for each such strategic objective so identified.

(4) Performance measures

Such plan shall describe how performance under the plan will be—

- (A) measured through objective, independently verifiable means, and
- (B) compared against performance goals, in order to determine the State's performance under this subchapter.

(b) Records, reports, audits, and evaluation**(1) Data collection, records, and reports**

A State child health plan shall include an assurance that the State will collect the data,