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## MEMORANDUM

**TO:** Health Care Clients and Friends  
**FROM:** Powers Pyles Sutter & Verville PC  
**DATE:** August 28, 2008  
**RE:** PRRB Issues New Rules on Appeal Procedures

The Provider Reimbursement Review Board (“PRRB”) recently published new Rules (the “Rules”) governing the PRRB appeals process.<sup>1</sup> The Rules were published in conjunction with the recent final rule issued by Centers for Medicare and Medicaid Services’s (“CMS”) that considerably changed the Medicare Part A reimbursement appeal process.<sup>2</sup> The Rules both incorporate changes to the PRRB appeal adopted by CMS and introduce new requirements, particularly with regard to pre-hearing filings. The Rules became effective August 21, 2008 and apply to all pending and future appeals.

### **I. Use of Forms for PRRB Filings**

The Rules require providers to use model forms for many filings, which are included as an appendix. The new forms are:

- Model Form A – Individual Appeal Request
- Model Form B – Group Appeal Request
- Model Form C – Request to Add Issue(s) to an Individual Appeal
- Model Form D – Request to Transfer Issue to a Group Appeal
- Model Form E – Request to join an Existing Group Appeal

<sup>1</sup> PRRB Rules, <http://www.cms.hhs.gov/PRRBReview/Downloads/PRRBRules2008.pdf>.

<sup>2</sup> Medicare Program; Provider Reimbursement Determinations and Appeals, 73 Fed. Reg. 30,190 (May 23, 2008). Please see PPSV’s previous memorandum on the Final Rule for further discussion, <http://www.ppsv.com/assets/attachments/41.PDF> (June 5, 2008).

- Model Form F – Joint Scheduling Order
- Model Form G – Schedule of Providers

The model forms for appeal requests incorporate CMS’s recently adopted regulation that requires specific information about each item appealed. Providers should reference the model forms, as well as Rules 5.4, 6-8, to determine what information should be included with the appeal request. The appeal forms also incorporate the regulatory requirement that the provider must certify that there is no other provider under common ownership or control that has a pending request for a Board hearing on any of the same issues for cost reporting periods that end in the same calendar year. In addition, a provider must certify that none of the appealed issues are pending in any other appeal for the same period, nor have any of the issues been adjudicated, withdrawn or dismissed from any other appeal.

## **II. Pre-Hearing Filings and the New Joint Scheduling Order Option**

Providers now have the option to enter into a joint scheduling order (“JSO”) rather than submit position papers. Previously, the PRRB established deadlines for the filing of the preliminary and final position papers in its letter acknowledging a hearing request. Under the new rules, the PRRB establishes a preliminary position paper deadline in its acknowledgment letter, but gives the parties the option to enter into a JSO by the same deadline.<sup>3</sup> The JSO is a written scheduling plan establishing all prehearing due dates (except the final position paper due date), as well as a suggested month and year for a hearing.<sup>4</sup> The JSO must include a description of the resolved, conditionally resolved, and unresolved issues in the appeal and the Rules specify information that must be included for conditionally resolved and unresolved issues.<sup>5</sup> The JSO must be signed by both the provider and the fiscal intermediary.<sup>6</sup> The Rules state that the deadlines set in the JSO become the Board deadlines and are subject to sanction for failure to comply, although parties may modify certain due dates through email or faxed signature.<sup>7</sup> As stated above, the PRRB has provided a model JSO, “Model Form F,” in the appendix to the Rules.

Although the provider still has the option to file a preliminary position paper, providers should note that the Rules establish new content and documentation requirements. A provider’s preliminary position paper must now include “fully developed positions” on each issue, include all supporting documentation, and must identify any additional documentation that is required to support its arguments.<sup>8</sup> The Rules state that, unless parties can demonstrate good cause, new arguments and

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<sup>3</sup> PRRB Rules 23.1, 23.3. Parties may also enter into a JSO after filing a preliminary position paper. PRRB Rule 25.4. Commentary to the Rules state that, if the preliminary position papers indicate that further development of information is needed, a JSO should be developed promptly. PRRB Rule 25.4 (Commentary).

<sup>4</sup> PRRB Rule 23.2.

<sup>5</sup> PRRB Rule 24.1.

<sup>6</sup> *Id.*

<sup>7</sup> PRRB Rule 23.2, 24.1.C.6.

<sup>8</sup> PRRB Rules 25.1, 25.2.

documents not included in the preliminary position paper may be excluded at hearing.<sup>9</sup> The preliminary position paper must include a statement indicating how a good faith effort to confer was made in accordance with 42 C.F.R. § 405.1853.<sup>10</sup>

Final Position Papers will now be due shortly before hearing. Generally, the provider's final position paper will be due 90 days before the scheduled hearing date; the intermediary's final position paper will be due 60 days before the scheduled hearing date; and the provider's response (a new, optional, type of filing) will be due 30 days before the scheduled hearing date.<sup>11</sup>

The Rules indicate that requests for postponement of a hearing will not be routinely granted. Specifically, the Rules states that, "representation that a settlement is imminent or probable will not guarantee a postponement. A recent change in representatives or the late filing of a motion will not generally warrant a postponement for either party."<sup>12</sup>

### **III. Postponement of Upcoming Due Dates**

Because the Rules impact pending cases, the PRRB has extended the due dates for upcoming position papers. If the PRRB acknowledgement letter in a pending case was sent prior to August 21, 2008, and the upcoming due date(s) for the preliminary or final position paper fall(s) on or after September 1, 2008, the provider's preliminary position paper deadline is extended by four months and the intermediary's preliminary position paper due date is extended by six months. The parties also have the option to enter into a JSO by the new extended deadline for the Provider's preliminary position paper. Due dates for final position papers can be disregarded because they will be reset in the PRRB's notice of hearing.<sup>13</sup>

### **IV. Other Requirements**

Some other minor changes to the Rules that providers should note are:

- copies of any document filed with the PRRB must be simultaneously sent to the opposing party in the same manner that it is sent to the Board;<sup>14</sup>
- documents should not be addressed to any individual Board member or staff member unless instructed to do so;<sup>15</sup> and

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<sup>9</sup> PRRB Rule 23.3 (Commentary).

<sup>10</sup> PRRB Rule 25.3. This provision requires the intermediary to "expeditiously attempt" to meet with the provider to resolve factual or legal issues after receiving a hearing request and to submit written stipulations setting forth unresolved issues. 42 C.F.R. § 405.1853(a).

<sup>11</sup> PRRB Rule 27.1.

<sup>12</sup> PRRB Rule 30.3.A.

<sup>13</sup> See Alert, <http://www.cms.hhs.gov/PRRBReview/Downloads/PRRBRules2008.pdf>.

<sup>14</sup> PRRB Rule 3.3.

<sup>15</sup> PRRB Rule 3.4.

- all filings and correspondence must include the case number (if available); the provider or group name, the provider number (for individual appeals) and the fiscal or calendar year end.<sup>16</sup>

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If you have any questions, please call Mary Susan Philp at (202) 872-6735, Barbara Straub Williams at (202) 872-6733, Hilton Marcus at (202) 349-4250, or the attorney with whom you usually work.

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<sup>16</sup> PRRB Rule 3.5.