

PRRB ALERTS

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**ALERT 22:
UPDATE – Mandatory Electronic Filing & Revised PRRB Rules,
Effective November 1, 2021
(September 30, 2021)**

On June 16, 2021, the Provider Reimbursement Review Board (“Board”) provided 120 days’ advance notice that it is adopting mandatory electronic filing effective November 1, 2021. In addition, the Board published revisions to Board Rules, effective November 1, 2021, and invited comments and other feedback from all interested parties on the revised Board Rules by Friday, July 30, 2021. Finally, the Board noted that: (1) it would review and consider all feedback but would not specifically respond to the feedback; and (2) based on its review of the comments, the Board might, as appropriate, further revise the Board Rules and, if so, would publish such revisions by Friday, October 1, 2021.

The Board appreciates the comments, suggestions, and other feedback it received from interested parties relating to both the Board Rules as well as OH CDMS. Based on its review of that feedback, the Board has decided to further revise the Board Rules to either correct certain identified errors or clarify the revisions to the Board Rules published on June 16, 2021. These additional revisions relate to Board Rules 4.4.3, 4.6.2, 5.4, 6.6, 7.3.2 - 7.4, 9, 20, 25, 25.3.1, 27.1, 28, 30.3.4, 31.1, 42.1, and 44.4.1 - 44.6.

The revisions to the Board Rules are effective November 1, 2021 and supersede all previous rules and instructions. Further, the Board reminds all parties appearing before the Board that *mandatory electronic filing remains effective November 1, 2021*. The revised Board Rules and related Board Order are located at <https://www.cms.gov/Regulations-and-Guidance/Review-Boards/PRRBReview/PRRB-Instructions>.

**ALERT 21:
Mandatory Electronic Filing & Revised PRRB Rules, Effective November 1, 2021
and Change of Address, Effective Immediately (June 16, 2021)**

The Provider Reimbursement Review Board (“Board”) has made revisions to the Board Rules, which are effective November 1, 2021 and supersede all previous rules and instructions. The Board Order adopting mandatory electronic filing and the revised Board Rules implementing this mandate as well as other revisions are located at <https://www.cms.gov/Regulations-and-Guidance/Review-Boards/PRRBReview/PRRB-Instructions>.

In updating the Board Rules to implement mandatory electronic filing, the Board made certain substantive changes as well as formatting, clarifications, and other non-substantive changes. The highlights of these updates include, but are not limited to:

- Updates the Provider Reimbursement Review Board filing rules, making electronic filing using the Office of Hearings Case and Document Management System (“OH CDMS”) mandatory, unless an exemption applies.
- Eliminates filing of Schedules of Providers (“SoP”) for group cases fully populated in OH CDMS. NOTE: For cases **not** fully populated in OH CMDS, the SoP must be filed electronically in OH CMDS and, in certain specific situations, a hard copy of the SoP must also be filed (e.g., when a request for expedited judicial review is filed, a hard copy of the SoP must be filed in addition to the concurrent or prior electronic filing of the SoP).
- Updates case representatives’ responsibilities to include familiarizing themselves with OH CDMS, as the required Board filing system and Board rules and procedures.
- Allows for the issuance of Board Orders, in lieu of Board Alerts, as an extension of the Board Rules.
- Requires providers to include information on parent owner or organization with an appeal request (as required by the regulation 42 C.F.R. §§ 405.1835(b)(4), (d)(4)).
- Updates the Board’s address to the following new mailstop because the Board is moving to a new permanent home, **effective immediately**:

Provider Reimbursement Review Board
CMS Office of Hearings
7500 Security Boulevard
Mail Stop: B1-01-31
Baltimore, MD 21244-1850.

- Updates rules for substantive claim challenges (relating to cost reporting periods beginning on or after 1/1/2016) and responses to said challenges pursuant to 42 C.F.R. § 412.24(j) and 42 C.F.R. § 405.1873(a).
- Updates the requirements for requests to postpone a hearing.
- Removes the blanket requirement to file 6 courtesy hard copies of briefs and exhibits 10 days prior to a scheduled Board hearing.

- Officially adds video conferencing and video hearings as options for pre-hearing status calls and for actual hearings.
- Sets a deadline for the Medicare Contractor to file responses to requests for Expedited Judicial Review (“EJR”).

As explained in the Board Order, the Board is inviting comments, suggestions, and other feedback on the revised Rules from all interested individuals, providers, government contractors, and other organizations. To ensure that your feedback is considered, we ask that you submit it via email only to PRRB@cms.hhs.gov by **Friday, July 30, 2021**. Please reference Alert 21 in the subject line of the email and describe in the email your nexus to the appeals process (e.g., provider, provider representative, consultant, or Medicare administrative contractor).

Please note that the Board will review and consider all feedback but will not specifically respond to the feedback. Accordingly, based on its review of the comments, the Board may, as appropriate, further revise the Board Rules and, if so, will publish such revisions by Friday, October 1, 2021. The Board looks forward to receiving your feedback.

**ALERT 20:
Change of Mailing Address
(August 20, 2020)**

The Board encourages Providers to file and correspond with the Board electronically using the Office of Hearings Case and Document Management System (“OH CDMS”). However, effective immediately, if you need to submit hard copy filings and correspondence, send it to the following new address:

Provider Reimbursement Review Board
CMS Office of Hearings
7500 Security Boulevard
Mail Stop: N2-19-25
Baltimore, MD 21244

Ensure you continue to follow the filing instructions in Board Alert 19. If you have any questions, or need more information about OH CDMS, please send an email to PRRB@cms.hhs.gov.

**ALERT 19:
Temporary COVID-19 Adjustments to PRRB Processes
(March 25, 2020)**

In keeping with guidance issued by the Office of Management and Budget (“OMB”), and public health precautions recommended in response to the COVID-19 virus, the Provider Reimbursement Review Board (“PRRB” or “Board”) and Centers for Medicare & Medicaid Services (“CMS”) support staff have temporarily adjusted their operations and are maximizing telework for the near future. The Board is an independent panel created to adjudicate Medicare Part A payment disputes of institutional Providers arising from final determinations. 42 U.S.C. § 1395oo. The Board recognizes that the immediate focus and priorities of Providers should be on caring for their patients. Likewise, the Board wants to ensure the health and safety of all relevant parties before the Board, while continuing to operate in the most efficient manner possible. Accordingly, the Board is issuing this Alert to provide information on processes affected by the temporary change in its operations. In light of the developing circumstances surrounding COVID-19, the Board plans to continuously reassess its response and will issue additional updates through Board Alerts, as necessary.

The Board would like to remind parties that its electronic filing system known as the Office of Hearings Case and Document Management System (“OH CDMS”) remains fully operational and parties can use the system to make same-day filings. OH CDMS is a web-based portal where Providers can file appeals and all parties can manage their cases. Besides instantaneously accepting submissions electronically, OH CDMS releases outgoing electronic correspondence and Board decisions as well. Use of OH CDMS is voluntary and it enables Providers and their representatives to manage their cases in real time and view all documents officially filed through the system (including viewing opposing parties’ submissions).

1. How to make filings with the Board.

- **Electronic Filings.** *The Board encourages Providers to file and correspond with the Board electronically* using OH CDMS. If you have not signed up to use OH CDMS, please visit the PRRB Electronic Filing webpage at <https://www.cms.gov/Regulations-and-Guidance/Review-Boards/PRRBReview/Electronic-Filing> or contact the Board via email at PRRB@cms.hhs.gov for more information.
- **Hard Copy filings.** The Board and CMS support staff are currently maximizing telework in response to the March 17, 2020 OMB Directive (M-20-16), and are not on site. Therefore, if you make **hard copy** filings with the Board during the pendency of the Board’s temporary change in operations, Board action on that filing will be delayed until after normal operations resume. Below are the instructions for making hard copy filings:
- **Mail/Third Party Carriers.** The Board directs Providers to continue sending all mail to the Board (whether sent by USPS, FedEx or UPS) using the Board’s official address at 1508 Woodlawn Dr., Suite 100, Baltimore, MD 21207, as all mail is being forwarded to the Board’s current location (see Board Alert 18). Again, please note that the Board’s processing of this mail will be delayed.
- **Hand Deliveries.** The Board has temporarily suspended hand deliveries.
- **Delayed or Undelivered Correspondence to the Board.** Consistent with Board practice, if Providers experience any delayed or undelivered correspondence to the Board (e.g., returned mail), the Board directs them to refile the correspondence and documents and explain those issues in the refiling. For example, if a filing was returned as undeliverable,

explain what transpired in the cover letter attached to the refiling and include a copy of the returned mail with the refiling.

2. Suspension of “Board-Set Deadlines” from Friday, March 13, 2020 Forward.

The Board has set deadlines to make certain filings in existing appeals including, but not limited to, deadlines for filing preliminary or final position papers, Schedules of Providers, witness lists, and case status reports (hereinafter “Board-Set Deadlines”). The Board encourages Providers and their representatives to continue to make these filings **electronically** through OH CDMS, as appropriate and in keeping with public health precautions. However, as the use of OH CDMS is not yet mandatory, the Board is suspending “Board-Set Deadlines” from Friday, March 13, 2020 forward until the Board is back to normal operations (see 42 C.F.R. § 405.1801 (d)). Once the Board is in position to resume its normal operations, the Board will reassess the public health situation and post an alert for further guidance on the deadlines for these suspended filings.

Note: “Board-Set Deadlines” does **not** include the deadlines for filing of appeals or adding issues to appeals or any other deadlines established by statute or CMS regulations. Pursuant to 42 C.F.R. § 405.1836, a Provider may submit a written request to the Board to extend the time for filing an appeal period for “good cause” where the Provider can establish that it could not reasonably have been expected to submit a hearing request within 180 days due to extraordinary circumstances beyond its control.

3. Processing Requests for Expedited Judicial Review (“EJR”).

Whenever possible, the Board plans to continue processing EJR requests received in OH-CDMS within 30 days. However, during the pendency of the Board’s temporary change in operations, the Board will not be able to receive and process EJR-related hard copy filings such as Schedules of Providers in the usual manner. This impediment affects the Board’s ability to determine whether “a provider of services may obtain a hearing under” the PRRB statute, which is a necessary jurisdictional prerequisite for a Provider to be able to request EJR. 42 U.S.C. § 1395oo(f); see *also* 42 C.F.R. § 405.1842(b). Accordingly, the Board will follow CMS regulations at 42 C.F.R. § 405.1801(d)(2) when calculating the Board’s 30-day time period by excluding all days where the Board is not able to conduct its business in the usual manner.

4. Postponing and Rescheduling April and May 2020 Hearings.

The Board will postpone and reschedule any in-person or telephonic hearing currently scheduled in April and May if the parties have been unable to reach administrative resolution. The Board Advisor handling your case will be in contact with the parties to obtain a status update and to reschedule, as appropriate. If the parties would like to proceed with a hearing currently scheduled in April or May, please contact your Board Advisor as soon as possible to discuss options. In light of the developing circumstances, the Board is exploring its options for conducting hearings moving forward.

**ALERT 18:
Temporary Relocation of the PRRB
(September 25, 2019)**

The Provider Reimbursement Review Board (“Board”) has temporarily relocated to CMS’ main complex because of a building emergency. Due to the emergency, the Board may not have access to hard copy/paper files for an unknown time. The Board is issuing this Alert to provide information on processes affected by the temporary relocation. The Board will provide additional instruction if necessary.

1. Filings and Correspondence with the Board:

- OHCDMS.—The Board’s new electronic filing system known as the Office of Hearings Case and Document Management System (“OH CDMS”) is fully operational and same day filings may be made with OH CDMS. The Board encourages Providers to file and correspond with the Board using OH CDMS. If you have not signed up to use OH CDMS please contact the OHCDMS Help Desk at 833-783-8255 or your Board Advisor for more information.
- Mail/Third Party Carriers.—The Board directs Providers to continue sending all mail to the Board (whether sent by USPS, FedEx or UPS) using the Board’s official address at 1508 Woodlawn Dr., Suite 100, Baltimore, MD 21207 as all mail is being forwarded to the Board’s temporary location.
- Hand Deliveries.—The Board hereby modifies Board Rule 3.3.2 as follows. To ensure that someone will be available to receive a hand delivery for the Board during the weekday hours of 8 am to 4 pm, Providers **must call and email 24 hours in advance** to the Board to request instructions on where and how to make any filings by hand delivery. Specifically, **at least 24 hours prior to each hand delivery**, Providers must call 410-786-2671 **and** send an email to PRRB@cms.hhs.gov to request instruction on where and how to make **each** filing by hand delivery.
- Delayed or Undelivered Correspondence to the Board.—Consistent with Board practice, if Providers experience any delayed or undelivered correspondence to the Board (e.g., returned mail), the Board directs them to refile the correspondence and document and explain those issues in the refiling. For example, if a filing was returned as undeliverable, explain what transpired in the cover letter attached to the refiling and include a copy of the returned mail with the refiling.

2. Hearings.—The Board is setting up alternative temporary hearing facilities in the Baltimore area. If you have a hearing coming up, the Board Advisor handling your case will be in contact with the parties to ensure the parties receive instructions on where the hearing will be held.

3. Hard Copy Files.—If your appeal and related filings were made in **hard copy**, the Board may not have access to that **hard copy** case file (in part or in whole) for the immediate future. To that end, Board action on your case may be delayed or the Board may request that the parties submit additional copies of filings previously made as needed and appropriate.

ALERT 17:
Board Review of Rules and Procedure for PRRB Proceedings;
Request for Comments, Suggestions, and Other Feedback
(March 18, 2019)

The Provider Reimbursement Review Board (“Board”) is in the process of reviewing its rules and procedure for Board proceedings established under the authority of 42 U.S.C. § 1395oo(e) and 42 C.F.R. § 405.1868(a) (hereinafter “Board Rules”). The current Board Rules are posted on the Board’s website at <http://www.cms.gov/Regulations-and-Guidance/Review-Boards/PRRBReview/PRRB-Instructions.html>. In particular, the Board is reviewing its Rules for the following areas:

1. Continued implementation of the new Office of Hearings Case and Document Management System (“OH CDMS”) as it relates to Board proceedings, including electronic filings in Board proceedings and the electronic issuance of all Board correspondence. In particular, we are interested in user feedback and experience on using OH CDMS for Board proceedings and how Board processes and OH CDMS can be better aligned.
2. Continued implementation of the final rule published on November 13, 2015 making certain revisions to the Board’s governing regulations at 42 C.F.R. Part 405, Subpart R. See 80 Fed. Reg. 70298, 70551-70580, 70597-70604 (Nov. 13, 2015).
3. Board Rules to facilitate Provider withdrawal of Board appeals to pursue resolution through reopening of the related NPR/RNPR. See Board Rules 46, 47.2.2, 47.2.3.
4. Board Rules related to group appeals including, but not limited to, the Schedule of Providers and supporting documentation discussed at Board Rules 20 to 22. See Board Rules 12-22.
5. Board Rules related to requests for expedited judicial review (“EJR”). See Board Rule 42.

To facilitate this review, the Board is inviting comments, suggestions, and other feedback on its Rules from all interested individuals, providers, government contractors, and other organizations. Please note that the Board will review and consider all feedback but will not specifically respond to the feedback. To ensure that your feedback is considered as part of the Board’s current review, we ask that you submit it via email only to PRRB@cms.hhs.gov by **May 1, 2019**. Please reference Alert 17 in the subject line of the email and describe in the email your nexus to the appeals process (e.g., provider, provider representative, consultant, or Medicare administrative contractor). The Board looks forward to receiving your feedback.

ALERT 16:
**Re-issuance of Case Acknowledgement and Critical Dues Dates Notices,
Requests for Information, and Notices of Hearing
(September 4, 2018)**

The PRRB will be re-issuing certain documents for open cases that were not filed through OH CDMS in order to identify pending due dates and establish responsive case actions in the new electronic system. (See PRRB External User Manual, section 3.3.4.1.) Please be aware that you could receive another Case Acknowledgement and Critical Due Dates Notice, a Request for Information, or another Notice of Hearing for your case over the next several weeks, but note that the critical due dates for your case have not changed.

Please contact the Help Desk at 1-833-783-8255 or Helpdesk_OHCDMS@cms.hhs.gov if you notice any problems. Thank you for your flexibility as we continue to transition to OH CDMS.

ALERT 15:
**Revised PRRB Rules
(August 29, 2018)**

The Board has made revisions to the PRRB Rules, which are effective August 29, 2018 and supersede all previous rules and instructions. See <http://www.cms.gov/Regulations-and-Guidance/Review-Boards/PRRBReview/PRRB-Instructions.html>.

The Board's goal is to facilitate early resolution of appeals and eliminate unnecessary filing burdens where appropriate. The highlights of the rule updates include, but are not limited to:

- Introduce the Office of Hearings Case and Document Management System ("OH CDMS") and implement its use into the rules;
- Require the transfer of issues from individual appeals to a common issue related party group (CIRP) appeals (if applicable) prior to the submission of the preliminary position paper or proposed joint scheduling order in order to comply with the related party regulations and narrow the issues briefed in the position papers;
- Require the filing of the full preliminary position paper to both the opposing party and the Board (currently the preliminary position paper is only filed on the opposing party with only a cover letter to the Board);
- Eliminate the requirement for a final position paper, making its submission optional and used to narrow the issues prior to hearing (applicable *only* for new appeals filed after the issuance of the rules);
- Eliminate the requirement of the post hearing brief, making its submission optional and subject to the Board's request
- Provide an additional reinstatement option, where providers can file an appeal to protect their appeal rights, but withdraw it immediately to handle through a reopening with the MAC. Those cases, if not resolved by the parties, would have the option of being reinstated by the Board.

ALERT 14:
PRRB Electronic Filing Is Available through OH CDMS
(August 16, 2018)

The PRRB module of the Office of Hearings Case and Document Management System (“OH CDMS”) is available for use. Users may access OH CDMS to file new appeals and all supporting documentation electronically and to review and maintain existing cases that are currently in an open status. The PRRB notices and decisions will be issued via email and will also be accessible through OH CDMS.

The PRRB Electronic Filing webpage at <https://www.cms.gov/Regulations-and-Guidance/Review-Boards/PRRBReview/Electronic-Filing.html> will soon be updated with a user manual and frequently asked questions. The PRRB will also be issuing a new set of Board Rules in conjunction with the implementation of OH CDMS as well as to update other processes and procedures.

If you have not yet registered for the system, we encourage you to begin that process. For any system or registration questions, please contact the OH CDMS Help Desk at 1-833-783-8255 or Helpdesk_OHCDMS@cms.hhs.gov.

ALERT 13:
Pre-Registration for PRRB Electronic Filing
(August 2, 2018)

The PRRB module of the Office of Hearings Case and Document Management System (“OH CDMS”) will soon be available for electronic filing; however, parties may begin pre-registering for access to the system prior to its release. Please reference <https://www.cms.gov/Regulations-and-Guidance/Review-Boards/PRRBReview/Electronic-Filing.html> for system updates, registration instructions, and frequently asked questions.

We would also like to offer several points of clarification:

- OHCDMS registration is for the system as a whole, so if you have already registered in response to the MGCRB alert, you do not need to separately register for the PRRB module.
- OH CDMS is designed that you may only have access to the system through one organization. You must register under the organization you work for, *not* for the provider(s) for which you intend to file a PRRB appeal or MGCRB application as multiple requests must be denied. For example, if you are at a parent level and oversee multiple providers within your corporate organization, then you should select the parent organization at registration.
- The designated representative of a case has full access to view and take action on that case. The designated representative may be selected from a provider, parent, or representative organization.

For any system questions, please contact the OH CDMS Help Desk at 1-833-783-8255 or Helpdesk_OHCDMS@cms.hhs.gov.

**ALERT 12:
Change of Address
(June 7, 2017)**

Effective June 19, 2017, the CMS Office of Hearings, which handles appeals for the CMS Hearing Officer, appeals for the Provider Reimbursement Review Board (PRRB), and reclassification requests for the Medicare Geographic Reclassification Review Board (MGCRB), will be moving its offices from its current address of 2520 Lord Baltimore Drive, Suite L to:

CMS Office of Hearings
1508 Woodlawn Drive
Suite 100
Baltimore, MD 21207

Any correspondence sent to the CMS Hearing Officer, PRRB, or MGCRB to be delivered June 19th and later should be sent to the new address. Any hearings scheduled on or after that date will also be held at the new address. If you have any questions, please call our information line at 410-786- 2671.

**ALERT 11:
Revision of PRRB Rules - Reinstatements and Withdrawals
(July 1, 2015)**

The Board has made revisions to the PRRB Rules regarding reinstatements and withdrawals (See Rules (and sub-rules) 46 and 48). The revisions are effective **July 1, 2015**. These instructions supersede those previously issued. The changes to the PRRB Rules have been highlighted and dated with the effective date of the change. The PRRB Rules can be found at <http://www.cms.gov/Regulations-and-Guidance/Review-Boards/PRRBReview/PRRB-Instructions.html>.

ALERT 10:
Danbury Hospital v. Blue Cross Blue Shield Ass'n,
DSH Medicaid Eligible Days Documentation
(May 23, 2014)

The Provider Reimbursement Review Board (“Board”) recently issued *Danbury Hospital v. Blue Cross Blue Shield Ass'n*, PRRB Dec. No. 2014-D3 (Feb. 11, 2014), *declined review*, Administrator (Mar. 26, 2014). In light of this decision, the Board will allow the parties to an appeal currently pending before the Board that includes the Disproportionate Share Payment (“DSH”) paid/unpaid Medicaid eligible days issue (the “Issue”) an opportunity to supplement the record based on the *Danbury Hospital* decision.

Specifically, the parties have 60 days from the date of this alert (*i.e.*, **May 23, 2014**) to supplement the record with additional arguments and/or documentation that would be relevant to the Board making a jurisdictional determination on the Issue. In considering whether additional information/documentation should be considered, the Board encourages providers with the Issue currently pending to review the *Danbury Hospital* decision. In particular, as reflected in the *Danbury Hospital* decision, the Board is interested in receiving the following *provider-specific* information/documentation to the extent it is not already in the record:

- A detailed description of the process that the provider used to identify and accumulate the actual Medicaid paid and unpaid eligible days that were reported and filed on the Medicare cost report at issue.
- The number of additional Medicaid paid and unpaid eligible days that the provider is appealing.
- A detailed explanation why the additional Medicaid paid and unpaid eligible days at issue could not be verified by the state at the time the cost report was filed. If there is more than one explanation/reason, identify how many of these days are associated with each explanation/reason.

Once the 60 days has expired, the Board will begin making jurisdictional decisions on the Issue for any pending appeals based upon the record at that time.

**ALERT 9:
Revision of PRRB Rules and Update of PRRB Model Forms
(March 1, 2013)**

A.) REVISION OF PRRB RULES

The Board has made revisions to the PRRB Rules (See Rules (and sub-rules) 3, 4, 5, 7, 9, 11, 12, 14, 15, 16, 20, 21, 22, 24, 27, 30, 37, and 44) updated July 1, 2009. **The revisions are effective March 1, 2013. These instructions supersede those previously issued.** The changes to the PRRB Rules have been highlighted and dated with the effective date of the change. The PRRB Rules can be found at <http://www.cms.gov/Regulations-and-Guidance/Review-Boards/PRRBReview/PRRB-Instructions.html>.

B.) REVISION HIGHLIGHTS (but not limited to)

Rule 3.3 now requires all Board correspondence be served on the opposing party AND the appeals support contractor (currently Blue Cross Blue Shield Association).

Rule 5.1 includes a reminder that it the Representative's responsibility to keep all contact information up to date with the Board, including the current e-mail address, as correspondence is frequently issued by the Board electronically.

Rule 7.1 requires that when appealing a Revised NPR, additional documentation is now required to support that the issue under appeal was revised in the Revised NPR pursuant to 42 C.F.R. § 405.1889.

Rule 16 adds additional documentation requirements when Filing a Form D to transfer an issue from an individual appeal to a group appeal as well as when filing a Form E to file directly from a Final Determination into a group appeal.

Rule 20.1 requires Schedules of providers with supporting documentation to be sent simultaneously to the Lead Intermediary and the Board.

Rule 21 has been significantly revised to include additional informational requirements on the Schedule of Providers (Schedule G) and additional supporting documentation requirements.

Rule 27.6 requires the additional 5 copies of final position papers to be submitted to the Board **7-10 business days** prior to a Board hearing.

C.) UPDATE OF PRRB MODEL FORMS

We have updated the PRRB model forms to incorporate the changes made to the Board Rules. Please begin using the revised model forms as soon as possible. We have also converted the revised model forms to a fillable PDF format, which can be found at <http://www.cms.gov/Regulations-and-Guidance/Review-Boards/PRRBReview/PRRB-Instructions.html>.

**ALERT 8:
Transferring Issues
(December 8, 2011)**

Effective immediately, the Board requires that the following supporting documentation be attached to a request to transfer an issue from an individual appeal to a group appeal:

- If the issue was included in the Provider's initial individual appeal request, you **MUST** attach a copy of the initial appeal request showing the issue was included in the original appeal to either your transfer request letter or Model Form D – Request to Transfer an Issue to a Group Appeal.
- If the issue was added to the Provider's pending individual appeal after the initial hearing request, you **MUST** attach a copy of the letter and/or a copy of the Model Form C (Request to Add Issue(s) to an Individual Appeal) you originally submitted to add the issue, to your transfer request letter or Model Form D – Request to Transfer an Issue to a Group Appeal.

In addition, the Board has revised Model Form D (Request to Transfer an Issue to a Group Appeal), to incorporate these new requirements. You can download the revised Model Form D at <http://www.cms.gov/Regulations-and-Guidance/Review-Boards/PRRBReview/PRRB-Instructions.html>.

**ALERT 7:
Procedures for Implementing CMS Ruling No. CMS-1498-R
(May 25, 2010)**

The Provider Reimbursement Review Board (Board) requests your assistance in identifying all cases and/or issues pending in cases impacted by the Centers for Medicare & Medicaid Services Ruling No. CMS-1498-R (CMS-1498-R), which provides for a recalculation of your disproportionate share hospital (DSH) payment adjustment. You can view CMS-1498-R under at <http://cms.gov/Regulations-and-Guidance/Guidance/Rulings/downloads/CMS1498R.pdf>.

The Ruling addresses three issues: (1) SSI fraction data matching process, (2) dual eligible days ("days where the patient was entitled to Part A benefits but the ... stay was not covered under Part A or ... benefits were exhausted" (See CMS-1498-R at p. 11), and (3) labor/delivery days. **If you have issues governed by the Ruling you will not be required to meet the due dates (including briefing and hearing dates) for those issues; however, you are still required to meet those due dates for all other issues remaining in the case.** The following procedures apply:

DEADLINES

On or before the position paper deadline:

- (1) Submit a letter to the Board and Intermediary
 - identifying those issue(s) in your case that are governed by CMS-1498-R and therefore will not be briefed, and
 - to assist the Board in prioritizing, we would appreciate your advising us which remand procedure you prefer.
- (2) Brief the remaining issues, if any, in accordance with the Board's rules. If in doubt about whether your issue is governed by the Ruling, brief it and include your position as to why it is or is not covered.

At least 30 days prior to the hearing date: Advise the Board and Intermediary in writing of issues or cases that will not require a hearing because they are governed by the Ruling. If you have not already received or requested a remand for the issues governed by the Ruling, state which remand procedure you select.

REMANDS

- You may request a remand of the case (including groups) or an issue governed by the Ruling beginning immediately under either the "alternative procedure" described at page 19 of the Ruling, or the "standard procedure" described at page 18.
- To assist the Board in expediting these requests, please put "REMAND REQUEST" and either "ALTERNATIVE PROCEDURE" or "STANDARD PROCEDURE" in the subject line.
- If you select the alternative procedure, refer to Section 4.C of the Ruling for provider responsibilities under the alternative implementation procedure. If you select the standard procedure, the Board will review jurisdiction based on the documentation in the record or, if necessary, will send a request for additional documentation. Providers should have documentation readily available that is sufficient to show jurisdiction (timely

filing, dissatisfaction, and amount in controversy) and to support the Schedule of Providers.

- In order to process remands for as many cases as possible, requests under the alternative procedure will be given priority. Without a request, the Board will review jurisdiction and remand under the “standard procedure” as expeditiously as possible in the regular course of business.
- Group appeals, including CIRPs, may request remand even if the group is incomplete.

If you have a question not answered by this Alert, send us a letter (no e-mails or telephone calls, please) setting out the circumstances and your question with a copy to the Intermediary/MAC. Be aware that the Board does not have any information about the Intermediary/MAC process or timelines beyond what is stated in the Ruling. It is our understanding that CMS will be issuing further instructions to the Intermediaries/MACs regarding implementation in the near future.

ALERT 6:
Baystate Medical Center v. Shalala
(March 23, 2010)

The Board is aware that the decision in *Baystate Medical Center v. Shalala*, 587 F.Supp. 2d 37 (D.D.C. 2008) (*Baystate*) has become final. The Board has placed many cases in abeyance for *Baystate* and directed providers to notify the Board within 60 days of the conclusion of the case if the cases in abeyance need to proceed to a hearing or if a settlement is expected. **THIS NOTICE IS TO ADVISE PROVIDERS THAT HAVE CASES IN ABEYANCE PENDING A FINAL BAYSTATE DECISION THAT IT WILL NOT BE NECESSARY TO CONTACT THE BOARD REGARDING THE FINAL OUTCOME OF BAYSTATE.** However, if jurisdictional documents have not been furnished to the Intermediary or the Board, we encourage you to do so promptly. The Board will notify providers when additional action will be necessary.

ALERT 5:
**Revision of PRRB Rules, Content of Proposed Joint Scheduling
Order (PJSO) and Update of PRRB Model Forms
(July 1, 2009)**

A.) REVISION OF PRRB RULES

The Board has made revisions to the PRRB Rules (See Rules 3, 4, 24 and 41) issued August 21, 2008. **The revisions are effective July 1, 2009. These instructions supersede those previously issued.** The changes to the PRRB Rules have been highlighted and dated with the effective date of the change. The PRRB Rules can be downloaded at <http://www.cms.gov/Regulations-and-Guidance/Review-Boards/PRRBReview/PRRB-Instructions.html>.

B.) CONTENT OF PJSOs

Having reviewed PJSOs received to date, the Board has found that most PJSOs fully comply with Rule 24. This Alert is to address those few exceptions that may jeopardize a right to appeal an issue.

Transfers in PJSOs –

Rule 24, PJSO Content, requires a detailed schedule of actions to resolve each issue up to and including hearing. A plan to transfer an issue in the future does not comply with Rule 24.1 in that it does not address material facts, legal positions on questions of law, data exchange, etc.

If your JSO includes transfer of an issue, the transfer must be complete (with name, case number of the group to which the transfer was made and the date of the request (see Form D) by the JSO filing date. If no group is available for transfer by the JSO filing date, the JSO for that issue must comply with the content requirements in Rule 24.1. If the transfer is not complete and the issue is not fully addressed as required by Rule 24.1, the issue is considered abandoned and dismissed from the case.

C.) UPDATE OF PRRB MODEL FORMS

We have updated the PRRB model forms to make them more “user-friendly.” Please begin using the revised model forms as soon as possible. We have also converted the revised model forms to a fillable PDF format, which can be found at <http://www.cms.gov/Regulations-and-Guidance/Review-Boards/PRRBReview/PRRB-Instructions.html>.

**ALERT 4:
Added Issue Prior to August 21, 2008 – Position Paper Deadlines
(November 12, 2008)**

If an issue was added to an appeal prior to August 21, 2008, after your final position paper was filed and the issue has not yet been briefed, a supplemental position paper that complies with the requirements of Rule 25 for the added issue is due as follows:

- Provider's supplemental position paper on the added issue – 120 days prior to hearing.
- Intermediary's responsive position paper on the added issue – 60 days prior to hearing.
- Provider's rebuttal (optional) – 30 days prior to hearing.

Exception: If you have a hearing date scheduled on or before March 1, 2009, contact the Intermediary to work out a position paper schedule for the added issue. If no agreement can be reached, contact your Board Advisor. The position paper must meet Rule 27 requirements.

**ALERT 3:
Added Issue Deadlines
(October 3, 2008)**

The following are deadlines applicable only to CASES PENDING BEFORE AUGUST 21, 2008, AND HAVE AN ISSUE ADDED ON OR AFTER AUGUST 21, 2008.

In cases filed prior to August 21, 2008, if issues are added after that date pursuant to 73 FR 30240 (60 days after implementation of the Regulations or, as applicable, 60 days after expiration of the 180 day appeal deadline) but **after position paper deadlines have already expired**, a supplemental position paper that complies with the requirements of Rule 25 for the added issue is due as follows:

- Provider's supplemental position paper – 120 days prior to hearing.
- Intermediary's response – 60 days prior to hearing.
- Provider's rebuttal (optional) – 30 days prior to hearing.

Exception: If you have a hearing date scheduled on or before March 1, 2009, contact the Intermediary to work out a position paper schedule for the added issue. If no agreement can be reached, contact your Board Advisor. The position paper must meet Rule 25 requirements.

**ALERT 2:
Clarification of PRRB Deadlines
(October 1, 2008)**

A.) Automatic Extension of Position Paper Due Dates – Individual Appeals

1. Alert 1: 2008 Automatic Extension of Position Paper Due Dates (August 13, 2008)

The August 13 2008 Alert only applies to preliminary and final position paper due dates **set out in the initial “Acknowledgement and Critical Due Dates” letter**. Any due dates set in a letter **not labeled** “Acknowledgement and Critical Due Dates” remain effective. (For example, expedited hearing schedules and previously extended due dates).

Providers who filed their preliminary position paper prior to September 1, 2008 have questioned whether the Intermediary still must file its preliminary position paper according to the originally established due date. The answer is no, the Intermediary's preliminary position paper due date is extended 6 months from the date that it was required to be filed under the notice given in the Acknowledgement and Critical Due Dates letter. If **either** the Provider **or** Intermediary's preliminary position paper is due (as set out in the initial “Acknowledgement and Critical Due Dates” letter) on or after September 1, 2008 this due date has been extended.

2. How to Calculate Extensions:

The Provider's Preliminary Position Paper is due 4 months after its current due date set out in the Acknowledgement and Critical Due Dates letter. For example: If the Provider's Current Preliminary Position Paper Due Date is November 1, 2008, the New Due Date would be March 1, 2009.

The Intermediary's preliminary position paper is due 6 months after its current due date set in the Acknowledgement and Critical Due Dates letter. For example: If the Intermediary's Current Preliminary Position Paper Due Date is November 1, 2008, the New Due Date would be May 1, 2009.

3. Proposed Joint Scheduling Order:

In the alternative, prior to the new due date for the submission of the Provider's preliminary position paper, the parties may enter into a proposed Joint Scheduling Order (proposed JSO) pursuant to Rules 23 and 24. This document must be filed on or before the due date of the Provider's preliminary position paper. In instances where the Provider has filed a preliminary position paper on or before the September 1 due date but the Intermediary's preliminary position paper is not yet due, for purposes of this transition only (see Rule 23.3), the parties may file a proposed JSO on or before the due date for the submission of the Intermediary's Preliminary position paper.

4. Final Position Papers:

If you received an Acknowledgement and Critical Due Dates letter dated prior to August 21, 2008 and your final position paper is due on or after September 1, 2008, neither the Provider nor the Intermediary is required to file their final position papers until the Board reassigns a final position paper due date when the case is scheduled for a hearing. The new due date for final position papers will be set forth in the Notice of Hearing. If you have already received a Notice of Hearing, it generally means that the final position papers have already been filed or your due

dates have been specially set in a document other than an Acknowledgement and Critical Due Dates letter. In either case, the August 13, 2008, Alert would not apply.

B.) Due Dates for Position Papers When a Revised NPR Appeal is Combined with an Existing Appeal – Individual Appeals

Where a Provider has filed an appeal of a revised NPR (or other revised determination) which was incorporated into an existing appeal and it has not yet filed its position papers in accordance with the Acknowledgement and Critical Due Dates letter, it must brief all issues in accordance with the 4-month extension policy set forth above. If the Provider has filed its position paper and subsequently received a letter notifying it that the appeal of the revised determination has been incorporated into the existing appeal and supplemental position papers are to be filed, it is to file the supplemental position papers in accordance with the Board's Notice letter.

C.) Optional (Non-CIRP) Groups Filed Prior to August 21, 2008

1. August 13, 2008 Alert:

The extensions granted in the August 13, 2008 ALERT apply to the preliminary position paper deadlines for optional groups set ONLY in Group Acknowledgement and Critical Due Dates letters dated before August 21, 2008. Extensions granted in the August 13 Alert DO NOT apply to any deadlines previously extended by the Board.

Groups who filed their preliminary position paper prior to September 1, 2008 have questioned whether the Intermediary still must file its preliminary position paper according to the originally established due date. The answer is no, the Intermediary's preliminary position paper due date is extended 6 months from the date that it was required to be filed under the notice given in the Acknowledgement and Critical Due Dates letter. If **either** the Group's or Intermediary's preliminary position paper is due (as set out in the initial "Acknowledgement and Critical Due Dates" letter) on or after September 1, 2008 this due date has been extended.

2. Other Deadlines:

The Schedule of Providers is due at the same time as the preliminary position papers (or the proposed JSO). This extension for position papers does not modify the 12 month cutoff for adding providers to the group.

3. How to Calculate Extensions:

The Group's Preliminary Position Paper is due 4 months after its current due date (set in the Acknowledgement and Critical Due Dates letter). For example: If the Group's Current Preliminary Position Paper Due Date is November 1, 2008, the New Due Date would be March 1, 2009.

The lead Intermediary's Preliminary Position Paper is due 6 months after its current due date (set in the Acknowledgement and Critical Due Dates letter). For example: If the lead Intermediary's Preliminary Position Paper due date is November 1, 2008, the New Due Date would be May 1, 2009.

The Board recognizes that the Group may have filed its preliminary position paper and questions if the lead Intermediary must now file its preliminary position paper according to the

originally established due date. The answer is no, the lead Intermediary's preliminary position paper due date is extended 6 months from the date that it was required to be filed under the notice given in the Group Acknowledgement and Critical Due Dates letter.

4. Proposed Joint Scheduling Order:

In the alternative, prior to the due date for the submission of the Group's preliminary position paper to the lead Intermediary, the parties may enter into a proposed Joint Scheduling Order (proposed JSO) pursuant to Rules 23 and 24. This document must be filed on or before the due date of the Group's preliminary position paper. In instances where the Group has filed a preliminary position paper on or before the September 1 due date but the lead Intermediary's preliminary position paper is not yet due, for purposes of this transition only (see Rule 23.3), the parties may file a proposed JSO on or before the due date for the submission of the lead Intermediary's Preliminary position paper. **The Schedule of Providers and associated jurisdictional documents must be submitted to the lead Intermediary with either the Group's preliminary position paper or the proposed JSO.**

5. Final Position Papers:

If you received a Group Acknowledgement and Critical Due Dates letter dated prior to August 21, 2008 and your final position paper is due on or after September 1, 2008 neither the Group nor the lead Intermediary is required to file their final position papers until the Board reassigns a final position paper due date when the case is scheduled for a hearing. The new due date for final position papers will be set forth in the Notice of Hearing. If you have already received a Notice of Hearing, it generally means that the final position papers have already been filed or your due dates have been specially set in a document other than a Group Acknowledgement and Critical Due Dates letter. In either case, the August 13, 2008, Alert would not apply.

D.) Optional (Non-CIRP) Groups that Received Group Acknowledgment and Critical Due Dates Letters Between August 21, 2008 and September 25, 2008

1. Preliminary Position Papers:

Groups that received Group Acknowledgement and Critical Due Dates letters dated August 21, 2008 through September 5, 2008 by e-mail had preliminary position paper due dates erroneously calculated based on the individual appeal due dates rather than group appeal due dates. To adjust those dates to the group appeal schedule, both parties have a six month extension to file preliminary position papers or a proposed JSO. This correction results in the Group preliminary position paper due date or proposed JSO being 60 days from the date the group must be fully formed (12 months after filing the appeal) and is consistent with other optional group appeal deadlines.

2. Other deadlines:

The Schedule of Providers and jurisdictional documentation must be filed at the same time as the preliminary position papers or the proposed JSO. All other dates in the Group Acknowledgement and Critical Due Dates letter remain the same.

3. How to Calculate Extensions:

The Group's Preliminary Position Paper and Schedule of Providers is due 6 months after the current due date. For example: If the Group's Current Preliminary Position Paper Due Date is April 1, 2009, the New Due Date would be October 1, 2009.

The lead Intermediary's Preliminary Position Paper is due 6 months after the current due date. For example: If the Intermediary's Current Preliminary Position Paper Due Date is August 1, 2009, the New Due Date would be February 1, 2010.

E.) Optional (Non-CIRP) Groups Filed On or After August 21, 2008

The August 13, 2008 Alert has no application. Group cases filed after August 21 will have preliminary position papers (or proposed JSO) deadlines set approximately 60 days after the group is fully formed (i.e., 12 months after filing).

You can expect the Group Acknowledgement and Critical Due Dates letter to establish the following approximate due dates:

12 months after filing: The group will be closed.

14 months after filing: The Group must send the Schedule of Providers (see Appendix - Model Form G of Board's Rules) and supporting documentation with a cover letter to the lead intermediary. These documents must demonstrate that the Board has jurisdiction over the providers named in the group appeal. Send a copy of the Schedule of Providers and the cover letter (but not supporting documentation) to the Board. See Appendix Model Form G and Board Rule 21.

AND

Submit one of the following documents:

1. To the Board: A proposed Joint Scheduling Order (proposed JSO). In this document, the Parties memorialize their written agreements and propose a scheduling plan covering all pre-hearing and hearing dates. It must be signed by both parties and request a hearing month and year. See Board Rule 24 for proposed JSO requirements.

OR

2. To the lead Intermediary: The Group's Preliminary Position Paper. In addition, the Group must file with the Board (1) a copy of the cover page of the Preliminary Position Paper; (2) the preliminary documentation list; and (3) a statement indicating how a good faith effort to confer was made in accordance with 42 C.F.R. § 405.1853 and Rule 25.

16 months after filing: The lead Intermediary must submit to the Board written notice indicating that it has reviewed the Schedule of Providers and the supporting documentation. This cover letter must state whether the issue is suitable for a group appeal and state whether jurisdictional impediments exist. Also, the lead Intermediary must forward the Schedule of Providers with the supporting documentation to the Board to become part of the official record. See Board Rule 22.

18 months after filing: If a proposed JSO is not filed, the lead Intermediary's Preliminary Position Paper is due to the Provider. The lead Intermediary must file with the Board (1) a copy

of the cover page of the Preliminary Position Paper; (2) the preliminary documentation list; and (3) a statement indicating how a good faith effort to confer was made in accordance with 42 C.F.R. § 405.1853. See Board Rule 25 for Preliminary Position Paper requirements.

F.) Mandatory (CIRP) Groups Filed Prior to August 21, 2008

Under the Board's Instructions in effect prior to August 21, 2008, common issue related party (CIRP) groups were to be closed 12 months from the date of the group hearing request. Under the Board's Rules effective August 21, 2008, CIRP groups will not be considered fully formed until all providers in the CIRP group have been joined. This includes any CIRP group that was filed prior to August 21, 2008 and any CIRP group that has received an extension to file preliminary position papers, final position papers or Schedules of Providers with accompanying jurisdiction documents. The Group is to notify the Board when the group is fully formed, not later than 185 days after the last provider in the group has received its NPR. In its own discretion, the Board at any time may ask the Group to present evidence regarding whether there are CIRP providers who have not yet received NPRs as noted above.

CIRP groups which received a Group Acknowledgement and Critical Due Dates letter prior to August 21, 2008 and which are complete prior to the preliminary position paper due date set forth in the Acknowledgement letter must comply with the position paper due dates set forth above in the section for non-CIRP groups.

G.) Mandatory (CIRP) Groups Filed On or After August 21, 2008

The August 13, 2008 Alert has no application to these cases. You can expect the Group Acknowledgement and Critical Due Dates letter to set due dates at these approximate intervals:

2 months after notice of full formation: Send a Schedule of Providers and supporting documentation with a cover letter to the lead Intermediary. These documents must demonstrate that the Board has jurisdiction over the providers named in the group appeal. Send a copy of the Schedule and the cover letter (without supporting documentation) to the Board. (See Appendix – Model Form G and Rule 21)

AND

Submit one of the following documents:

1. To the Board: A proposed Joint Scheduling Order (proposed JSO). In this document, the Parties memorialize their written agreements and propose a scheduling plan covering all pre-hearing and hearing dates. It must be signed by both parties and request a hearing month and year. See Board Rule 24 for proposed JSO requirements.

OR

2. To the lead Intermediary: The Provider's Preliminary Position Paper. In addition, the Provider must file with the Board (1) a copy of the cover page of the Preliminary Position Paper; (2) the preliminary documentation list; and (3) a statement indicating how a good faith effort to confer was made in accordance with 42 C.F.R. § 405.1853 and Rule 25.

4 months after notice of full formation: The lead intermediary must submit to the Board written notice indicating that it has reviewed the Schedule of Providers and the supporting documentation. This cover letter must state whether the issue is suitable for a group appeal and state whether jurisdictional impediments exist. Also, the lead Intermediary must forward the

Schedule of Providers with the supporting documentation to the Board to become part of the official record. See Board Rule 22.

6 months after notice of full formation: If a proposed JSO is not filed, the lead Intermediary's Preliminary Position Paper is due to the Provider. The lead Intermediary must file with the Board (1) a copy of the cover page of the Preliminary Position Paper; (2) the preliminary documentation list; and (3) a statement indicating how a good faith effort to confer was made in accordance with 42 C.F.R. § 405.1853. See Board Rule 25 for Preliminary Position Paper requirements.

**ALERT 1:
Automatic Extension of Position Paper Due Dates
(August 13, 2008)**

The Centers for Medicare & Medicaid Services issued new appeal regulations for Medicare Part A provider appeals on May 23, 2008. These regulations at 42 C.F.R. § 405, Subpart R, affected Provider Reimbursement Review Board (PRRB) appeals pending as of or filed on or after August 21, 2008.

If you received an acknowledgement letter prior to August 21, 2008 which set preliminary or final position paper due dates that fall due on or after September 1, 2008, the Provider's preliminary position paper deadlines (or proposed JSO) is extended by four months from the original due date. If a jointly executed proposed JSO is not filed by this 4 month extension, the Intermediary's preliminary position paper due date will be extended by six months from the original due date as noted in the acknowledgement letter.

The parties may disregard any final position paper due dates set in acknowledgment letters issued before August 21, 2008. Final position paper due dates will be reset in the Board's Notice of Hearing.

Example: An acknowledgement letter issued August 5 would set the Provider's and Intermediary's preliminary due dates as December 1 and February 1 respectively. Both parties' final position papers would have been due on April 1. Under this scenario, the parties would have to submit either a jointly signed proposed JSO or a provider preliminary position paper by April 1 and if a proposed JSO was not submitted, the intermediary preliminary position paper would be due 6 months from the original due date or on August 1. In either case, the original final position paper due dates would be suspended and new dates will be set in the Board's Notice of Hearing.