



CMS' New Rules For Medicare Part A Appeals at the Provider Reimbursement Review Board (PRRB)

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Overview

- Background on New Rule
- Limitation on Adding Issues to Appeals
- Adding Issues to Existing Appeals
- Self-Disallowed Costs
- Cost Report Reopenings
- Contents of Hearing Request
- PRRB Action in Response to Failure to Follow Rules
- PRRB Instructions





Background

- PRRB established in 1972
- Existing regulations for PRRB hearings more than 30 years old
- Regulations supplemented by PRRB Instructions
- Proposed Rule published June 25, 2004
- Final Rule published May 23, 2008
- Effective date: Generally for appeals pending or filed on or after **August 21, 2008**



Background (cont'd)

- Stated Reasons for New Rule:
 - To update regulations
 - To reduce backlog of cases at PRRB. Current backlog of 6,800 plus cases
 - To make appeal process more effective and efficient



Limitation on Addition of Issues to Appeals 7

- Old Rule: Providers could add issues to existing appeal any time prior to PRRB hearing
 - At time of filing of an appeal, provider might not possess all of facts or documentation needed to determine whether particular issue should be appealed
 - Provider could add issues based on subsequent legal and reimbursement developments, or new matters that came to provider's attention



Limitation on Addition of Issues to Appeals 8

- CMS concerned that addition of issues, particularly at late stages of appeal and just prior to hearing, was disruptive to hearing process
- New Rule:
 - Request to add issues to an appeal must be received by PRRB no later than **60 days** after expiration of initial 180-day filing period
 - No extension of 60-day deadline for any reason
 - Most controversial aspect of new Rule



Limitation on Addition of Issues to Appeals (cont'd)

- Impact of New Rule:
 - Represents major change to PRRB appeals practice. In past, providers could file appeal with at least one valid appeal, then add other issues later on
 - Providers now must thoroughly evaluate Notice of Program Reimbursement (NPR) and timely appeal all issues at same time



Limitation on Addition of Issues to Appeals (cont'd)

- New Rule: Application to Existing Appeals
 - For appeals pending as of August 21, 2008, deadline for adding new issues is later of: (i) **60 days after expiration of 180-day appeal filing period**; or (ii) **October 20, 2008**
 - No extension of deadline for any reason



Limitation on Addition of Issues to Appeals (cont'd)

11

- Impact on Existing Appeals:
 - Providers should thoroughly review all existing appeals, and submit letters adding issues. Letter must be received by PRRB by **October 20, 2008**.
 - PRRB will likely be deluged with large volume of letters adding issues. Providers should retain proof of delivery. Certified mail with return receipt requested, Federal Express, or other delivery with confirmation of receipt is recommended.

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Current Significant PRRB Appeal Issues

12

- Graduate Medical Education (FTE resident count for current year, prior years, and base year; residents in offsite training programs)
- Indirect Medical Education (FTE resident count for current year, prior years, and base year; residents in offsite training programs)
- Disproportionate Share Hospital Payments
- Medicare Bad Debts
- Critical Access Hospitals (reimbursed based on reasonable costs)

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Revised Self-Disallowance Policy

13

■ Current Situation:

- CMS' longstanding position is that if provider fails to claim costs allowable under Medicare law on its cost report, it cannot file appeal regarding such costs because provider not dissatisfied with intermediary determination
- Self-disallowed costs can be appealed if provider followed CMS instruction not to claim



Revised Self-Disallowance Policy (cont'd)

14

■ New Rule

- Provider must either: (a) claim an item on its cost report when seeking reimbursement that it believes to be in accordance with Medicare policy; or (b) self-disallow item (file cost report "under protest") when seeking reimbursement that it believes may not be in accordance with Medicare policy
- In order to self-disallow item, provider must follow procedures in Medicare Reimbursement Manual, Part II, Section 115
- Effective date: Cost reporting periods beginning on or after **December 31, 2008**
- If provider's appeal successful on self-disallowed cost, intermediary required to audit cost or issue to determine proper reimbursement effect. If provider disagrees with audit results, could be possible second appeal to PRRB



15

Cost Report Reopenings

■ New Rule:

- Intermediary may reopen a determination that is pending before PRRB or CMS Administrator
- Decision on whether or not to reopen not subject to judicial or administrative review

16

Contents of Hearing Request

- Provider must demonstrate that hearing request satisfies PRRB jurisdictional requirements (minimum \$10,000)
- Provider must explain for each disputed item: (a) why Medicare payment is incorrect; and (b) how and why Medicare payment must be determined differently
- Provider must submit copy of Intermediary or CMS determination that is subject of appeal
- Provider must submit documentary evidence necessary to show it meets jurisdictional requirements. For example, copy of NPR and audit adjustments at issue

Contents of Hearing Request (cont'd)

17

- PRRB may dismiss appeal with prejudice if all of content criteria for hearing request are not met. At minimum, request for hearing must include:
 - Demonstration that provider has right to hearing (i.e., met amount in controversy and timely filing requirements);
 - Explanation for each disputed item of why provider believes payment is incorrect, how and why payment should be determined and, if self-disallowed or protested cost is involved, nature and amount of item, and reimbursement sought;
 - Copy of determination under appeal; and
 - For Group Appeals: If there are any other provider entities related to provider, name and address of parent entity and statement that, to best of provider's knowledge, no related provider has pending PRRB hearing request on any of same issues for same calendar year, or statement that there are pending appeal(s), supplying provider name(s), number(s) and case number(s).



Timeliness of Hearing Request

18

- Old Rules:
 - Regulation: Provider must file (place in mail) appeal request to the PRRB **within 180 days** of date that determination was mailed to provider
 - Current PRRB Instructions: Request must be received by PRRB **no later than 180 days** after the determination was received by the provider.



Timeliness of Hearing Request (cont'd)

19

- New Rule:
 - PRRB must receive appeal request **no later than 180 days** after the provider received determination being appealed, e.g., NPR
 - Provider is presumed to have received determination **5 days** after issuance, unless established to contrary by preponderance of evidence
 - Date of receipt by PRRB is **date of delivery** if delivered by nationally-recognized courier, or date it is stamped “received” if delivered otherwise, unless established to the contrary by preponderance of evidence. Determination of date of receipt is not subject to appeal
- Recommend that providers submit appeals well in advance of deadline by certified mail with return receipt requested, Federal Express, or other delivery with confirmation of receipt. Retain proof of delivery

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Filing Extensions

20

- Old Rule: Late filing could be accepted if “good cause”
- New Rule:
 - Extension of deadline granted only for good cause due to **extraordinary circumstances** beyond provider’s control, e.g., natural disaster or strike.
- Determination of good cause by PRRB or CMS Administrator not subject to judicial review

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Discovery

21

- Old Rule: No specific time limit for requesting discovery
- New Rule:
 - Must submit discovery request no later than **120 days** before initially scheduled hearing, unless extended by PRRB upon request
 - Response to discovery request must be submitted no later than **45 days** before hearing, unless PRRB orders otherwise
 - Discovery does not apply to CMS or any other federal agency
 - Providers must assess the case well in advance of hearing date

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Board Action in Response to Failure to Follow PRRB Rules

22

- If provider fails to comply with PRRB Rules, PRRB may dismiss case, issue order to show cause why case should not be dismissed, or take other remedial action Board considers appropriate
- If Intermediary fails to comply with PRRB rules, PRRB may issue decision based on written record submitted to that point, or notify CMS and request CMS take appropriate action
- Unclear if CMS means to give PRRB power to ultimately find in provider's favor on merits if intermediary fails to comply with PRRB rules

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PRRB Instructions

23

- PRRB issued Draft Instructions in February 2005 – never finalized
- Most significant and controversial aspect of Draft Instructions concerns appeal information and documentation that would have to be submitted with appeal letter. Providers would be required to submit explanation and documentation currently required in provider's preliminary position paper.
- PRRB will likely make revisions to current Instructions to reflect New Rule

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Questions & Answers

24

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