

August 14 , 2008

Provider Reimbursement Review Board Issues Revised Instructions

The Provider Reimbursement Review Board ("PRRB") has issued revised *Instructions* that become effective August 21, 2008. The revised *Instructions* reflect the revised regulations, which were the subject of our prior recent Alert.

The revised Instructions are posted on the internet:

<http://www.cms.hhs.gov/PRRBReview/Downloads/PRRBRules2008.pdf>

In recognition that pending cases are impacted by the revised *Instructions*, the PRRB has issued the following alert which impacts position papers with due dates on or after September 1, 2008:

"ALERT: Automatic Extension of Position Paper Due Dates

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."

Additionally, the revised *Instructions* establish significant changes in the requirements to virtually the entire appeals process, from filing the appeal through the hearing. The appeal request must state the issues and the basis for the PRRB's jurisdiction in much greater detail than was previously required. Moreover, the parties may now agree upon the schedule of events through a Joint Scheduling Order, which then becomes the official set of deadlines for the filing of position papers and other required documents. Further, the Preliminary Position Paper now assumes a much greater prominence, and is required to be a much more polished and elaborate document than has previously been accepted by the PRRB. These are merely a few examples of the numerous other provisions impacting PRRB appeal procedure.

The PRRB has the authority to dismiss an appeal that does not comply with the *Instructions*. Those familiar with practice before the PRRB would agree that the PRRB has never been reluctant to dismiss an appeal where a provider misses a deadline or fails to comply with a procedural requirement, and that the PRRB historically is unforgiving and rarely grants reinstatement.

Thus, to assure that appeal rights in existing and new appeals are asserted and maintained, providers and their representatives must quickly familiarize themselves, and assure that all appeals comply, with these new provisions.

Please contact Ken Marcus, or any of the attorneys listed below, if you have questions or need assistance regarding compliance with these significantly revised *Instructions*.

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