PRRB Announces New Address, Mandatory Electronic Filing, and Significant Proposed Changes to Rules, Inviting Comments on or before July 30, 2021

Insights 06.17.21

On June 16, 2021, the Provider Reimbursement Review Board (the "PRRB" or the "Board") issued Alert 21, announcing major revisions to the PRRB Rules and the adoption of mandatory electronic filing, effective November 1, 2021. In doing so, the PRRB issued a revised edition of the PRRB Rules (version 3.0), also effective November 1, 2021. The most significant of these revisions are summarized below. The PRRB has requested comments on the revised PRRB Rules by ***July 30, 2021***, following the review of which the PRRB will publish any further revisions to the Rules by October 1, 2021.

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Alert 21 also updated the PRRB's mailing address, *effectively immediately*, to its new *permanent* home:

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

Summary of the Most Significant Provisions of the New Rules

The Board's Order adopting mandatory electronic filing, and the accompanying revised PRRB Rules implementing this mandate, provide the most significant changes to the PRRB's procedures since August 2018. Of greatest importance, the PRRB's "Order No. 1: Mandatory Electronic Filing" means that, *effective November 1, 2021*, all submissions to the Board for new or pending appeals must be filed electronically using the PRRB's electronic filing system [the Office of Hearings Case and Document Management System ("OH CDMS")], unless the PRRB grants an exemption. Other significant revisions in the 102-page revised Rules include:

Significant procedural changes

- **Adding new procedures for "substantive claim challenges"** applicable to cost reporting periods beginning on or after 1/1/2016. ***See* Rule 44.5**. This rule implements revisions to the cost report regulations to require a provider that wishes to "potentially qualify for reimbursement" for an item to "include an appropriate claim" in the

cost report. *See* 42 C.F.R. § 413.24(j). This "substantive reimbursement requirement" applies alike to items that are allowable under Medicare policy and those that are not. For the latter, the provider must protest the item in the cost report (as previously required under the now-abandoned provisions in the Board's jurisdictional regulation) or, upon challenge, the item is "not reimbursable."

- The new rule establishes procedures to implement the Board's review of any substantive claim challenges under 42 C.F.R. § 405.1873. In individual cases, substantive claim challenges must be filed by the provider's preliminary position paper deadline; in group cases, the deadline is 60 days after the group files its final Schedule of Providers ("SoP"). These deadlines may only be extended "for good cause." In either type of case, any provider subject to the challenge has 30 days to respond, unless the Board grants a motion for additional time. The Board will decide these challenges on the written record, unless a provider "requests otherwise by motion (*g.*, request for additional time to submit evidence, request [for] a hearing to present argument and evidence) and the Board grants leave for any additional filings or proceedings."
- If a provider requests Expedited Judicial Review ("EJR") before the expiration of the ordinary deadline for substantive claim challenges, the MAC has an expedited deadline of only 5 days after the EJR request to file any substantive claim challenge. The provider then has the ordinary time to respond. However, critically, the "EJR request is stayed during the pendency of" the challenge, and the new rule does not set any timeline for the Board's decision on the challenge.

- **Setting a deadline for MACs to oppose EJR requests**. ***See* Rule 42.4.** If a MAC disagrees that an issue is subject to EJR, it must file any opposition within 5 days after an EJR request was filed.

Changes in filing requirements

- **Updating filing information requirements for Self-Disallowed Items**. ***See* Rules 7.3 and 7.4**. Despite CMS Ruling 1727-R and *Bethesda Hospital Ass'n. v Bowen*, 485 U.S. 399 (1988), Rule 7.3 still contains separate, though materially similar, information requirements for protested items for cost reporting periods beginning before 1/1/2016 and after 1/1/2016 (related to the different policies and regulations in place during the periods). Essentially, for each protested item, the provider must (1) identify the protested amount, (2) include the worksheet that was submitted with the as-filed cost report, and (3) include the as-filed Worksheet E from the accepted cost report or the audit adjustment report reflecting the protest amount. Rule 7.4 has also been revised to direct the parties to "follow the process" in new Rule 44.5 (described above) to initiate substantive claim challenges.
- **Requiring providers filing individual appeals to include information on parent owner or organization *for the year under appeal*** with an appeal request (as required by the regulation 42 C.F.R. §§ 405.1835(b)(4), (d)(4)). The revised Rules also clarify that providers that are not part of a CIRP organization *for the calendar year at issue* may not join a CIRP group appeal covering that year. ***See* Rules 6.6 and 12.7.**
- **Eliminating the filing of Schedules of Providers ("SoP") in hard copy for group cases fully populated in OH CDMS**. ***See* Rule 20**. *NOTE*: For cases *not* fully populated in OH CDMS, the SoP must be filed electronically in OH CDMS 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).
- **Removing the blanket requirement to file six courtesy hard copies** of briefs and exhibits 10 days prior to a scheduled Board hearing. ***See* Rule 35.1.**

Changes in hearing procedures

- **Officially adding video conferencing and video hearings** as options for pre-hearing status calls and for actual hearings. ***See* Rule 32.3.**
- **Updating the requirements for requests to postpone a hearing**. ***See* Rule 30.3.**

Changes in provider representative responsibilities and supplemental Board directives

- **Updating case representatives' responsibilities** to include familiarizing themselves with the Board's governing statute and regulations, as well as the revised PRRB Rules and OH CDMS. ***See* Rule 5.2**.
- **Allowing for the issuance of Board Orders**, in lieu of Board Alerts. ***See* Rule 1.1**. These allow the Board to issue non-case specific orders to "modify or revise its Rules on a temporary basis," as an extension of the Board Rules.

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The PRRB invites comments, suggestions, and other feedback on the revised Rules from all interested individuals, providers, government contractors, and other organizations, via e-mail only to PRRB@cms.hhs.gov by ***Friday, July 30, 2021***. To the extent the Board further revises the PRRB Rules, it will publish such revisions by Friday, October 1, 2021.

Hooper, Lundy & Bookman is available to assist with submission of comments and feedback to the revised Rules, and we also welcome your input for inclusion in the comments that we intend to submit.

For further information, please contact Kelly Carroll, Bob Roth or David Vernon in Washington D.C., Sven Collins in Denver, Nina Adatia Marsden in Los Angeles, or your regular Hooper, Lundy & Bookman contact.

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