

FREQUENTLY ASKED QUESTIONS

NOTE: The following are answers to questions received through October 1, 2008 and that have not been answered in previous Alerts. We will continue to periodically review questions sent to SuggestionsonPRRBrules@cms.hhs.gov and publish clarifications as needed.

If the new extended due dates fall after the scheduled hearing date, will the hearing date be rescheduled?

This should not occur because under the old rules, hearings have not typically been scheduled until final position papers have been filed. If you have an accelerated hearing that may be atypical, contact your Board Advisor if you have questions. Those cases usually have due dates specially set for the accelerated schedule, not set through the Acknowledgment and Critical Due Dates letter; therefore, the extensions in the August 13, and October 1, 2008 Alerts would not apply. (October 24, 2008).

May administrative resolution of an appeal occur at any time?

Yes, administrative resolution of an appeal can occur at any time in the proceedings. There is no impediment to resolution in the law, regulation or Board's rules. The parties may resolve an issue in an individual appeal or the parties may resolve the issue under dispute for one or more individual providers within a group.

If all of the issues in an individual appeal are resolved, the provider must formally withdraw the appeal by submitting a letter to the Board or by submitting the administrative resolution signed by the parties. Likewise, if one or more providers administratively resolve the issue under dispute within a group appeal, those providers must be formally withdrawn from the group appeal through a written notice to the Board. The remaining providers in the group can proceed to a hearing on the issue. (October 24, 2008).

I added an issue prior to August 21, 2008 but after my final position paper was filed. When is my position paper due on the added issue?

It was due when you filed the added issue under the rules in effect at the time. See Part I.C.VII under the old Board instructions. However, if you failed to do so, consistent with Rule 27.4, relief may be obtained if the parties can reach an agreement regarding a briefing schedule. (October 24, 2008).

If I filed final position papers before the new rules were effective but need to update my position paper for hearing, is there a time limit?

Rule 27, specifically 27.3 and 27.4, addresses this matter. Position papers filed prior to the new rules' effective date must meet the rules in effect at the time they were required to be filed. (October 24, 2008).

What is going to happen to the new appeal requests that are not following the new rules? Will the PRRB be contacting the Providers to let them know that they should have complied with the new rules?

As in the past, providers that substantially comply but have a deficiency may be notified and given a short time to comply before dismissal. In those instances, the appeal will be considered timely filed if the deficiency is corrected within the time limit set in the notice. However, if you fail to receive a deficiency letter and the case proceeds, it does not preclude the Board from taking remedial action at a later time. See Rule 9 (October 24, 2008).

What period of time do I use to determine whether providers in a Common Issue Related Party (CIRP) group appeal are related by common ownership or control?

Neither the statute nor the regulations explicitly specify the point in time in which the related organization test is to be applied. However, the regulations specify for a CIRP appeal, the provider participants must have a fiscal year end at issue that “arises in cost reporting periods that end in the same calendar year.” It follows that ‘relatedness’ refers to the same time period at issue in the appeal. Generally, the providers listed in the home office cost statement for that period would be considered related for purposes of the CIRP rules. If the group organization believes other providers are related based on other criteria, those providers should also be included in the CIRP. We will continue to rely on the organization to properly identify providers that are commonly owned during the period at issue.

We recognize that various transactions may cause “related by common ownership or control” to change after a cost report period ends. Nothing in the statute or regulations indicates properly filed CIRP appeals are required to restructure based on a change of ownership (CHOWs). Likewise, there is nothing in the statute or regulations to indicate properly filed optional group appeals are required to restructure based on CHOWs.

Providers should be aware, however, that CMS’ policy is to issue payment to the current signatory of the Medicare provider agreement. If a CHOW occurs, it is up to the provider owners to contract among themselves as to liabilities, assets and representation. It is beyond the Board’s authority to make determinations as to these contractual matters (October 24, 2008).

The Board’s Acknowledgement and Critical Due Dates letter now identifies the date when 2 options are available: (1) write a preliminary position paper and have the case continue to a hearing; or (2) choose to enter a Joint Scheduling Order (JSO). If the parties choose to file a proposed JSO where there are four issues; two issues that can be resolved and two issues that cannot be resolved, should we indicate that two of the issues will be resolved and set position paper due dates and a hearing date for the unsolved issues in the JSO?

If the parties enter into a JSO, a preliminary position paper is not required for any issue regardless of whether the parties expect it to be resolved without a hearing. However, the parties can agree to file preliminary position papers and schedule it along with other actions

they deem necessary if they believe preliminary position papers would be helpful to understand positions. All deadlines within JSOs can be amended by agreement of the parties as circumstances change (a modification of the hearing date or final position paper requires Board approval and a showing of good cause). (October 24, 2008)

Can the model forms be modified to add information or can I include information in a cover letter?

Appeal filings must meet the requirements of the regulations. The model forms and certifications are aids to assure that information is complete. The use of the model forms also helps the Board manage cases. The type of information requested is the minimum needed to establish a case number. Additional explanation needed to clarify responses should be added (October 24, 2008).