

ALERT 2: CLARIFICATION OF PRRB DEADLINES (October 1, 2008)

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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.

<u>Provider's Current Preliminary Position Paper Due Date</u>	<u>New Due Date</u>
September 1, 2008	January 1, 2009
October 1, 2008	February 1, 2009
November 1, 2008	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:

<u>Intermediary's Current Preliminary Position Paper Due Date</u>	<u>New Due Date</u>
September 1, 2008	March 1, 2009
October 1, 2008	April 1, 2009
November 1, 2008	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:

<u>Current Preliminary Position Paper Due Date</u>	<u>New Due Date</u>
October 1, 2008	February 1, 2009
November 1, 2008	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:

<u>Current Preliminary Position Paper Due Date</u>	<u>New Due Date</u>
October 1, 2008	April 1, 2009
November 1, 2008	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 ACKNOWLEDGEMENT & CRITICAL DUE DATES LETTERS BETWEEN AUGUST 21, 2008 AND SEPTEMBER 5, 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.

Current Preliminary Position Paper Due Date
April 1, 2009

New Due Date
October 1, 2009

The lead Intermediary's Preliminary Position Paper is due 6 months after the current due date.

Current Preliminary Position Paper Due Date
August 1, 2009

New Due Date
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 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 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.