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## Don't Miss Deadline for Adding Issues to Pending PRRB Appeals (Generally, October 20, 2008)

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In this Issue

*Don't Miss Deadline for Adding Issues to Pending PRRB Appeals (Generally, October 20, 2008)*

**CMS Issues FY 2010 Hospital Wage Index Development Timetable**

Payment Group

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Be aware that the deadline for adding issues to pending PRRB appeals is fast-approaching. For appeals filed from Notices of Program Reimbursements (NPRs) or other appealable determinations received on or before February 23, 2008, the deadline is **October 20, 2008**.

### Deadline for Adding Issues

Under the new PRRB regulations at 42 C.F.R. § 405.1835(c) and the preamble discussion at 73 Fed. Reg. 30,240 (May 23, 2008), the time limit for adding issues to appeals pending at the PRRB on August 20, 2008 (the effective date of the new regulations) is the **later** of the following two dates:

- 60 days after the expiration of the 180-day appeal period from receipt of the NPR or other determination under appeal; or
- October 20, 2008 (60 days after the effective date of the new PRRB regulations).

Thus, for appeals filed from NPRs or other determinations received on or after February 24, 2008, the deadline for adding issues expires 240 days after receipt of the determination. Example: A hospital receives an NPR on April 1, 2008, and files an appeal at the PRRB on August 1, 2008. The deadline for adding issues is November 27, 2008 (180 days from April 1 plus 60 days).

For appeals filed from NPRs or other determinations received on or before February 23, 2008, the deadline for adding issues expires October 20, 2008. Example: A hospital receives an NPR on January 1, 2008 and files an appeal at the PRRB on June 1, 2008. The deadline for adding issues is October 20, 2008 (because the 180 day + 60 day period ends August 27, 2008).

For most pending appeals, then, the applicable deadline is **October 20, 2008**.

### Issues to Consider Adding to Appeals

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There are a host of issues that providers often include in appeals. Here is a partial list of issues for providers to consider adding to pending individual appeals. Note that the new PRRB Rules require that for certain issues (disproportionate share hospital (DSH) adjustments, bad debt disallowances, graduate and indirect medical education (GME/IME) issues and wage index issues), each contested component must be separately identified as an appeal issue.

**DSH Issues**

- Medicaid Paid Days
- Medicaid Eligible But Unpaid Days
- Charity/General Assistance Days
- Dual Eligible – Medicare Part A Exhausted Days
- Dual Eligible – Medicare Secondary Payer Days
- Dual Eligible – Medicare HMO/M+C/Medicare Advantage
- DSH/Supplemental Security Income (SSI) Days
- Available Beds

**Bad Debt Issues**

- Crossover (Medicaid) Claims ("must bill" policy)
- Use of Outside Collection Agency
- 120-day Presumption of Uncollectibility
- Indigence/Charity Determinations
- Prior Approval by Intermediary under Statutory Moratorium

**GME/IME Issues**

- Resident FTE Counts (including didactic and research time, new programs, weighting)
- Available Beds (IME)
- Clinical Base Year
- Non-provider Rotations (written agreement requirements)
- Medicare Managed Care/M+C/Medicare Advantage Days

**Wage Index** (Note that all providers in a given CBSA or rural area that are affected by a wage index issue should consider appealing under the group appeal rules).

- Wage Data Corrections
- Wage v. Wage-Related Costs

- Rural Floor
- Budget Neutrality
- Pension/Post-Retirement Benefit Costs
- Use of FASB v. GASB
- Contract Labor (including consultants, attorneys)

#### **Nursing/Allied Health**

- Medicare HMO/M+C/Medicare Advantage Days

#### **Sampling/Extrapolation Issues**

- This could apply to DSH, Bad Debts, or other issues.

#### **Procedures for Adding Issues**

The PRRB now requires the use of a new form (Model Form C – Request To Add Issue(s) To An Individual Appeal) when issues are added. [See [www.ober.com/shared\\_resources/news/newsletters/payment-matters/2008/modelform-c.pdf](http://www.ober.com/shared_resources/news/newsletters/payment-matters/2008/modelform-c.pdf).] For each issue added, provider representatives must include a brief description, the audit adjustment number (s) (with a copy of the adjustment from the audit adjustment report), the amount in controversy (with a calculation), and a statement identifying the legal basis of the appeal. If a preliminary or final position paper has already been filed in the appeal, provider representatives will need to file a supplemental paper addressing the added issue, with all supporting documentation.

**Ober|Kaler's Comments:** Prior to the effective date of the new rules, providers could add issues to pending appeals right up to the hearing date. Now providers will have to stay abreast of possible appeal issues and more closely scrutinize their audit adjustments in order to timely preserve their appeal rights.

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