



Wisconsin Office of Rural Health  
Hospital Finance Workshop

## PRRB Appeals Process: Feeling Short Changed After the NPR?

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### PRRB – Purposes

- "Provider Reimbursement Review Board"
- Purposes
  - Established by Social Security Act of 1972
  - National, independent forum
  - Hearing process to decide payment disputes
  - Providers and Intermediaries participate
  - Fair notice and opportunity to present positions
  - Subject to CMS Administrator and Judicial Review



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### Statutory Authority

#### Individual Provider Appeal

42 U.S.C. § 1395oo(a)

- Statutory Jurisdictional Requirements
  - Dissatisfaction With Final Payment Determination
    - By Intermediary or
    - By Secretary
  - Amount in Controversy \$10,000 or More
  - File Request Within 180 Days of Determination



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## Statutory Authority

### Group Appeal

42 U.S.C. § 1395oo(b)

- In Addition to Individual Appeal Requirements
- Common Question of Fact or Interpretation of Law
- Amount in Controversy \$50,000 or More



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## Statutory Authority

### CMS Administrator Review

42 U.S.C. § 1395oo(f)(1)

- A decision of the Board shall be final unless the Secretary, on his own motion, and within 60 days after the Provider of services is notified of the Board’s decision, reverses, affirms, or modifies the Board’s decision



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## Statutory Authority

### Expedited Judicial Review (EJR)

42 U.S.C. § 1395oo(f)(1)

- PRRB is bound by statute, regulation and CMS Rulings
- Although PRRB may enjoy procedural jurisdiction, it may lack authority over substantive issue in dispute
- Provider can request, or PRRB on its own motion, can determine that PRRB lacks authority
- If Provider requests EJR, PRRB has 30 days to respond to a request, otherwise Provider may proceed to court



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## Statutory Authority

### Federal Court Review

42 U.S.C. § 1395oo(f)(1)

- Providers shall have the right to obtain judicial review of any final decision of the Board, or of any reversal, affirmance, or modification by the Secretary, by a civil action commenced within 60 days of the date on which notice of any final decision by the Board or of any reversal, affirmance, or modification by the Secretary is received



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## PRRB - Jurisdiction

- Typical case
  - audit adjustment on NPR/RNPR affecting payment for covered services or items furnished to Medicare beneficiaries
- Excluded payment issues
  - Whether services or items are covered by Medicare
  - Prospective payment system issues
  - Budget neutrality adjustments
  - Validity of Provider agreements
  - Interim rates



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## PRRB - Authority

- May affirm, modify, reverse, wholly or in part final determinations of FI or CMS/DHHS
- Bound by statutes and regulations – cannot overturn these, only the courts can
- NOT bound by CMS interpretive guidance (manuals, etc.) but gives great deference



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## PRRB - Composition

- 5 members appointed by Secretary of DHHS
  - All must be knowledgeable in the field of cost reimbursement
  - At least 1 CPA
  - 2 must be Provider representatives
- Secretary designates 1 as chairperson
- 3 year staggered terms
- Quorum (3 – at least 1 Provider rep) required for decisions



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## PRRB Case Load\*

FY	Balance	Appeals Filed
2007	6,790	2,912
2008	7,836	2,994
2009	8,100	2,305
2010	7,561	<b>1,393</b>
2011	7,297	<b>534</b>

\* FY 2002 – all time high of 13,907 cases

\* As of 3/15/11, per PRRB staff



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## PRRB Case Load (cont'd)\*

### Individual vs. Group

- Individual Cases      3,305
- Group Cases            3,992
- Total Open Cases      7,297

\* As of 3/15/11, per PRRB staff



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## PRRB – Starting a Case

- FI issues Notice of Program Reimbursement (NPR)
  - Desk review or field audit
  - Audited cost report & audit adjustment report
  - Includes appeal rights summary
- Provider files Request for Hearing with PRRB
  - Assumed mailed 5 days after date on FI NPR
  - Amount in controversy must be:
    - >\$10,000 for individual appeal
    - >\$50,000 for group appeal
  - PRRB must receive within 180 days of FI mailing NPR\*

\* 2008 Rule Change – prior rule required mailing within 180 days  
42 C.F.R. § 405.1835(a)(3)



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## PRRB – Group Process

- Two or more unrelated Providers **may** form group if:
  - One issue
  - Question of fact, or interpretation of law, regulation, ruling
  - Common to all group members
  - Collective amount in controversy exceeds \$50,000
- Multiple issues require multiple groups
- Group appeal **required** for related parties with same issue and more than \$50,000 in controversy



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## PRRB - CIRP Groups

- Commonly Owned/Controlled Providers  
42 U.S.C. § 1395oo(1)  
Any appeal to the Board or action for judicial review by Providers which are under common ownership or control...must be brought by such Providers as a group with respect to any matter involving an issue common to such Providers
  - Related Providers appealing the same issue for the same fiscal year must file a group appeal
  - This is a statutory requirement and cannot be waived by the PRRB



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### PRRB - CIRP Groups (cont'd)

- Two or more Providers are considered to be "related" if there is common ownership or control as defined in the related party rule. 42 C.F.R. § 413.17(b)
- Common ownership or control is defined as having:
  - significant ownership or equity interest; and or
  - the ability significantly to influence the actions or policies of the other party

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### PRRB - CIRP Groups (cont'd)

- A CIRP group for related Providers may be filed based on the date of the first NPR received by a Provider for the year since a CIRP group need only have one Provider included in the group formation. PRRB Rule 12.5. A non-CIRP group, however, requires at least two Providers be included in the group formation
- When filing a request for group formation (Model Form B), documentation that would be included in a schedule of Providers establishing Board jurisdiction, as discussed above, must be included for at least one Provider for a CIRP group and at least two Providers for a non-CIRP group

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### PRRB - CIRP Groups (cont'd)

- Related and unrelated Providers cannot be commingled in a group appeal and Providers in chain organizations may not join an optional, non-CIRP group unless the \$50,000 amount in controversy requirement is not met by the chain Providers. 42 C.F.R. § 405.1837(b); PRRB Rule 12.6

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## PRRB – Request for Hearing

- Required components
  - Provider name, Medicare Provider Number & FYE
  - FI name
  - Copy of final determination (NPR/RNPR)
  - Copy of audit adjustments (if applicable)
  - Calculation of amount in controversy
  - Summary of specific issues, findings of fact & conclusions being contested – and basis for dissatisfaction with payment determination
  - Letter of representation (if applicable)
  - **MUST BE FILED/RECEIVED WITHIN 180 DAYS OF NPR!!!\***

\* 2008 Rule Change – 42 C.F.R. § 405.1835(a)(3)



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## FI – Reopening Request

- Reopening request
  - Must be filed within 3 years of decision (NPR, RNPR, etc.)
  - Reopening discretion rests solely with FI/PRRB
  - **NO APPEAL** from denial, PRRB lacks jurisdiction over FI's denial of request to reopen cost report
  - CMS may require reopenings in very limited circumstances (change in law, etc.)



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## PRRB – Reopening Request

- If Provider misses 180 days, only options are
  - File good cause exception w/PRRB – **ALMOST NEVER GRANTED**
    - Involuntary destruction of records
    - Unusual or unavoidable circumstances – could not have been reasonably expected to timely file



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## PRRB – Legal Representation?

- Provider
  - Not required to have legal counsel – can do it yourself
  - If represented – does not need to be attorney or CPA, can be anyone, except:
    - someone excluded from program
    - officer or employee of FI
- FI – NGS
  - Will be represented by attorney from Blue Cross Blue Shield Association



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## PRRB – Scheduling Order

- Confirms receipt of Request for Hearing and assigns case number
- Due Dates Established
  - Provider preliminary position paper (PPP)
  - Provider submission of jurisdictional documents
  - FI PPP
  - FI – review of jurisdictional documents
- **Alternative: Parties may file a Proposed Joint Scheduling Order when Providers' PPP is due**



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## PRRB - Proposed Joint Scheduling Orders

- Use of Joint Scheduling Orders
  - Require FI/Provider Agreement
  - Good alternative to standard Board Scheduling Order
  - Encourages the participants to think about the issues, game plan how the case will proceed
  - Can shorten the timeline to completion
  - PRRB Model Form details contents of PJSOs



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## PRRB – Submission of Jurisdictional Document in Group Appeals

- Jurisdictional document is required to establish that each participating hospital has a valid claim
- Use of PRRBs’ Model Forms is strongly encouraged
  - See Model Form G - Schedule of Providers in Group
- Once Provider submits jurisdictional documentation, FI is required to identify any jurisdictional objection
- **Note:** However, jurisdictional objections may be raised at any time throughout the proceedings before the PRRB

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## PRRB – Prehearing Process

- PRRB Instructions establish rules for
  - Discovery\*
    - Interrogatories
    - Depositions
    - Subpoenas
  - Use of Affidavits
  - Detail requirements for position papers
  - Information required in advance of hearing
    - Witness lists
    - Cost reports, etc

\* 2008 Rule Change – Discovery from CMS has been limited by change in Code of Federal Regulations

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## PRRB – Adding Issues to Appeal\*

- Must be done within 60 days of 180-day deadline for filing hearing request

\* 2008 Rule Change – adding issues was previously open ended as to the timeframe once case was before PRRB

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### PRRB – Mediation Option

- PRRB offers non-binding mediation option
- Requires agreement of FI & Provider
- Mediator appointed
- Settlement discussions scheduled
- If not settled, resume normal process

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### PRRB – The Hearing

- Live Hearing – held in Baltimore, MD
  - Typically in front of at least all 5 members, but only a quorum is required
  - Oral argument/presentation of case
  - Testimony by witnesses
    - called by Provider, FI
  - Questioning by PRRB members as well as counsel for the Provider/FI
  - Transcript made to preserve witness testimony as part of Administrative Record

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### PRRB – The Hearing (cont'd)

- Alternative: Can request "hearing on the record" – using only position papers and exhibits – can be efficient in simple cases with limited financial consequences

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### PRRB – The Decision

- Post-hearing briefs with proposed decision are expected
- PRRB Instructions say decision normally rendered within 6 months – may take much longer

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### CMS Administrator Review

- Either party or CMS may initiate following Board decision
- Administrator often reverses Providers favorable decisions
- Administrative Review must be completed within 60 days of Board decision

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### Expedited Judicial Review

- Provider can avoid PRRB and seek expedited judicial review for:
  - Challenge to validity of governing statute or regulation or CMS ruling
  - Effectively assumes negative PRRB decision because Board is bound by statutes and CMS Regulations
  - Provider can file EJR request at any time case is pending before PRRB
  - EJR decision must be issued within 30 days or Provider can proceed to Federal Court

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### Judicial Review – Federal Court

- Providers dissatisfied with Final PRRB or CMS Administrator decision can appeal into federal court within 60 days of final decision
  - Federal Court Review under *Administrative Procedure Act*
    - High level of deference to final Administrative decision
    - Court will uphold decision unless.....arbitrary, capricious, or abuse of discretion or contrary to law.....
- 5 U.S.C. § 706



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### 2008 Changes to PRRB Regs/Rules

- Substantial revision of Federal Regulations and PRRB Rules in 2008
- Tend to limit Provider access to PRRB
  - Limit addition of issues to appeal – 60 days from 180-day filing deadline
  - More restrictive “self-disallowance” policy – must be in cost report and disallowed to be subject to appeal to establish “dissatisfaction”



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### 2008 Changes to PRRB Regs/Rules (cont'd)

- Note: This may be contrary to Supreme Court ruling – *Bethesda Hospital Association v. Bowen*
  - .....Submission of a cost report in full compliance with the unambiguous dictates of the Secretary’s rules and regulations does not, by itself, bar the Provider from claiming dissatisfaction with the amount of reimbursement allowed by these regulations
- Limited Providers right to discovery from CMS
- Increases reliance on Model Forms
- Use Model Forms particularly important for Group Appeals



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## 2008 Changes to PRRB Regs/Rules (cont'd)

- PRRB Model Forms
  - Model Form A – Individual Appeal Request
  - Model Form B – Group Appeal Request
  - Model Form C – Request to Add Issue(s) to an Individual Appeal
  - Model Form D – Request to Transfer Issue to a Group Appeal
  - Model Form E – Request to Join an Existing Group Appeal/Direct Appeal from Final Determination
  - Model Form F – Proposed Joint Scheduling Order
  - Model Form G – Schedule of Providers in Group



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## PRRB – Practice Pointers

- Preserve Your Appeal Issues
- Be On Time
- Manage The Calendar
- Make a good Record
- Be Prepared to Go The Distance



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## PRRB – Practice Pointers (cont'd)

- Preserve Your Appeal Issues
  - Proof of “dissatisfaction” is a jurisdictional requirement
  - Claimed cost is subject of cost report adjustment
  - New rules require use of “protest” methodology on cost report if cost not claimed
  - Medicare Advantage patients – send shadow bills to FI to enhance DSH, GME and IME reimbursement



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### PRRB – Practice Pointers (cont'd)

- **Be On Time**
  - Timely request for hearing is jurisdictional prerequisite
  - Timely submission of position papers/jurisdictional documents is necessary to avoid dismissal of appeal
  - Failure to meet any other due dates may also result in dismissal

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### PRRB – Practice Pointers (cont'd)

- **Manage the Calendar**
  - Use Joint Scheduling Orders whenever possible
  - Be proactive – ask the PRRB staff to schedule a hearing, don't wait for your number to come up
  - Ability to establish facts degrades as time passes

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### PRRB – Practice Pointers (cont'd)

- **Make a Good Record**
  - Identify and segregate all relevant documents early in the process
  - Identify potential witnesses to support claims
  - Invest the time and resources necessary to complete the record at hearing
  - Record before the Board cannot be supplemented before CMS Administrator or federal court

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## PRRB – Practice Pointers (cont'd)

- **Be Prepared to Go The Distance**
  - Recognize that it is a long process
  - PRRB has large backlog of cases
  - FI's have limited resources and many appeals to process
  - CMS Administrator has last word
  - Standard of review in federal court is highly deferential to final Administrative decision



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## Where to Find It

- PRRB Rules can be found at  
[http://www.cms.hhs.gov/prrbreview/downloads/prrbrules\\_2008.pdf](http://www.cms.hhs.gov/prrbreview/downloads/prrbrules_2008.pdf)
- PRRB Decisions can be found at  
[www.cms.gov/prrbreview/prrb/list.asp](http://www.cms.gov/prrbreview/prrb/list.asp)



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# THE END

## Thank you!

By Daniel F. Miller  
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