

**UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES
PROVIDER REIMBURSEMENT REVIEW BOARD**

**Order No. 3: Revoking Temporary COVID-19 Adjustments To Board Processes
Issued Under Alert 19**

I. Background

Pursuant to its authority under 42 C.F.R. § 405.1868(a), the Provider Reimbursement Review Board (“Board”) issued Alert 19 on March 25, 2020 in response to the COVID-19 pandemic’s impact on providers and Board operations. Alert 19 announced that the Board and the Centers for Medicare and Medicaid Services (“CMS”) support staff were in maximum telework status and that the Board had implemented certain temporary changes to its operations and procedures.

II. Order

The Board hereby withdraws Alert 19 and the temporary adjustments to its processes as set forth below:

A. Board Filings

When the Board issued Alert 19 on March 25, 2020, it encouraged providers to file and correspond with the Board *electronically* using the Office of Hearings Case Document Management System (“OH CDMS”). The Board subsequently revised its Rules pursuant to a regulatory change at 42 C.F.R. § 405.1801(d) and mandated electronic filing using OH CDMS, effective November 1, 2021. *See* Alert 21; Board Order No. 2. Therefore, because mandatory *electronic* filing remains in effect, the withdrawal of Alert 19 has no impact on Board filing procedures.

B. Board-Set Deadlines as Defined in Board Rule 2.1.3

Through Alert 19, the Board suspended “Board-Set Deadlines” (as defined in Board Rule 2.1.3) from Friday, March 13, 2020 forward, subject to the Board returning to normal operations. ***Effective Wednesday, December 7, 2022***, the Board will cease suspending deadlines and will hold parties to the deadline specified in: (a) *any* Board rule or instruction; and (2) *any* Board issued notice or correspondence issued ***on or after that date***. Further, in some instances, the Board issued a notice or order (original or revised) that the Board specifically designated as *exempt* from the Alert 19 suspension of Board-set deadlines and these Alert-19-exempt deadlines remain unchanged and mandatory.

For those previously suspended deadlines (original or revised) which have not been met and which have not been reissued with deadlines specifically *exempted* from Alert 19, the Board will issue revised Notices of Hearings or Notices of Critical Due Dates on a rolling basis over the next 6 months, establishing a new deadline consistent with existing Board Rules. If you have questions regarding your Notice of Hearing, you should submit them in correspondence through OH CDMS on your specific case or contact the Board Advisor assigned to your case. If you have questions regarding any other deadline or Notice, you should submit them in correspondence through OH CDMS on your specific case.

C. Processing Requests for Expedited Judicial Review (“EJR”)

Effective Wednesday, December 7, 2022, the Board is returning to normal operations and, accordingly, will not be using the authority of 42 C.F.R. § 405.1801(d)(2) to exclude any days on, or after, the effective date for that reason.

The Board affirms that, on a case-by-case basis, it *may* consider and grant an extension of time under Board Rule 44.6 to the Medicare Contractor independent of the preset 20-day extension process currently provided in that Rule. The Board further reminds parties appearing before it that 42 C.F.R. § 405.1842(b)(2) provides the following instruction on when the 30-day time period begins:

[T]he 30-day period for the Board to make a determination under section 1878(f)(1) of the Act [*i.e.*, 42 U.S.C. § 1395oo(f)(1)] ***does not begin to run until the Board finds jurisdiction*** to conduct a hearing on the specific matter at issue in the EJR request ***and*** notifies the provider that the provider's request is complete.

(Emphasis added.)

D. Postponed or Rescheduled Hearings

In Alert 19, the Board announced the postponement of in-person and telephone hearings scheduled in April and May of 2020. Since that time, the Board has offered the parties the option of participating in a virtual hearing and, effective November 1, 2021, formally adopted virtual hearings as a hearing forum in Board Rule 32.3. The Board will continue to make the virtual hearing option available, as appropriate under Board Rule 32.3, while also resuming in-person hearings at the Board’s offices in Baltimore, Maryland in the near future. If you have questions about your hearing options, please contact the Board Advisor assigned to your case.

Accordingly, this Order shall be published at <https://www.cms.gov/Regulations-and-Guidance/Review-Boards/PRRBReview/PRRB-Instructions>, shall be issued to the provider community as part of Board Alert 23, and shall remain in effect until further order of the Board.

Board Members Participating:

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For the Board:

11/7/2022

X Clayton J. Nix

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Chair
Signed by: PIV