

# Payment Matters™

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## Payment Group

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## Final Part A Reimbursement Appeal Regulations Expected Soon

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On June 25, 2004, CMS issued proposed changes to the regulations governing appeals of reimbursement determinations to the Provider Reimbursement Review Board and intermediaries. In June of 2006, the time period for adopting final rules would have expired, except that the agency extended the period. We have recently been advised that on February 8 of this year, the agency submitted a draft of the final rules to the Office of Management and Budget (OMB) for its review. This submission starts the 90-day period permitted for OMB review, although it is entirely possible that OMB may not use the full 90 days.

The proposed rules included many provisions, which were outlined in my earlier article in the *Ober|Kaler Health Law Alert, Fall/Winter of 2004* and in the *July 31, 2007 Payment Matters*. It is unknown what the final rules will contain. However, one of the more concerning provisions was the restriction on adding issues to pending appeals. Specifically, the proposed rules would add a time bar to a provider's ability to add issues to an existing appeal — requiring that issues be added by the 240<sup>th</sup> day following receipt of the determination, e.g., notice of program reimbursement (NPR). Currently, the regulations permit providers to add issues any time prior to a hearing date.

**Ober|Kaler's Comments:** We cannot know until the final rules are made public what provisions in the proposed rules will be adopted. There are, however, certain actions providers should begin to take now in preparation. Although the rules should have at least a 30-day implementation period, providers should begin claiming costs on their cost reports, either on the appropriate lines for those costs or as protested amounts, in order to preserve their rights to appeal those issues. Also, providers should begin the process to identify and add issues they wish to contest to pending appeals and should more closely evaluate all disallowances at the time of the NPR and filing of the appeal to confirm that they have identified all potential appeal issues.

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