
42 C.F.R. § 405.1842

Expedited judicial review.

- (a) *Basis and scope.* (1) This section implements provisions in section 1878(f)(1) of the Act that give a provider the right to seek EJR of a legal question relevant to a specific matter at issue in a Board appeal if there is Board jurisdiction to conduct a hearing on the matter (as described in § 405.1840 of this subpart), and the Board determines it lacks the authority to decide the legal question (as described in § 405.1867 of this subpart, which explains the scope of the Board's legal authority).
- (2) A provider may request a Board decision that the provider is entitled to seek EJR or the Board may consider issuing a decision on its own motion. Each EJR decision by the Board must include a specific jurisdictional finding on the matter(s) at issue, and, where the Board determines that it does have jurisdiction on the matter(s) at issue, a separate determination of the Board's authority to decide the legal question(s).
- (3) The Administrator may review the Board's jurisdictional finding, but not the Board's authority determination.
- (4) The provider has a right to seek EJR of the legal question under section 1878(f)(1) of the Act only if—
- (i) The final EJR decision of the Board or the Administrator, as applicable, includes a finding of Board jurisdiction over the specific matter at issue and a determination by the Board that it has no authority to decide the relevant legal question; or
- (ii) The Board fails to make a determination of its authority to decide the legal question no later than 30 days after finding jurisdiction over the matter at issue and notifying the provider that the provider's EJR request is complete.
- (b) *General—(1) Prerequisite of Board jurisdiction.* The Board (or the Administrator) must find that the Board has jurisdiction over the specific matter at issue before the Board may determine its authority to decide the legal question.
- (2) *Initiating EJR procedures.* A provider or group of providers may request the Board to grant EJR of a specific matter or matters under appeal, or the Board on its own motion may consider whether to grant EJR of a specific matter or matters under appeal. Under paragraph (c) of this section, the Board may initiate own motion consideration of its authority to decide a legal question only if the Board makes a preliminary finding that it has jurisdiction over the specific matter at issue to which the legal question is relevant. Under paragraphs (d) and (e) of this section, a provider may request a determination of the Board's authority to decide a legal question, but the 30-day period for the Board to make a determination under section 1878(f)(1) of the Act 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.
- (c) *Board's own motion consideration.* (1) If the Board makes a finding that it has jurisdiction to conduct a hearing on a specific matter at issue in accordance with § 405.1840(a) of this part, it may then consider on
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its own motion whether it lacks the authority to decide a legal question relevant to the matter at issue.

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