



Client Alert



Contact Attorneys Regarding
This Matter:

Daniel M. Formby
404.873.8786 - direct
daniel.formby@agg.com

Lanchi Nguyen Bombalier
404.873.8520 - direct
lanchi.bombalier@agg.com

Arnall Golden Gregory LLP
Attorneys at Law

171 17th Street NW
Suite 2100
Atlanta, GA 30363-1031

1 Biscayne Tower
Suite 2690
2 South Biscayne Boulevard
Miami, FL 33131

2001 Pennsylvania Avenue NW
Suite 250
Washington DC 20006

www.agg.com

Ninth Circuit Court of Appeals Issues Decision on Reopening of Medicare Claims

On September 11, 2012, the United States Court of Appeals for the Ninth Circuit issued the long-awaited decision on *Palomar Medical Center v. Sebelius*, D.C. No. 3:09-cv-00605-BEN-NLS, concluding that a health care provider may not challenge a Medicare Recovery Audit Contractor's (RAC) decision to reopen a Medicare claim.¹ After noting that the Congressional intent in establishing the RAC program was to recoup Medicare overpayments from providers, the Court of Appeals held that the RAC's decision to reopen a Medicare claim is not reviewable. Not only does the *Palomar* case preclude the ability of a provider to pursue an administrative appeal based on the "good cause" standard for a reopening, for those claims more than one year old, but the appellate decision also has broader application by suggesting that providers have no right to challenge a contractor's decision to reopen and review older claims.

The *Palomar* case itself began as a provider's appeal of the medical necessity of the inpatient rehabilitation services provided to a beneficiary, but the controversy focused more on the interpretation of two Medicare regulations, one that provides that a Medicare contractor must have "good cause" to reopen a claim that is more than one year old and a second regulation which notes that a contractor's decision on whether to reopen is final and not subject to appeal. 42 C.F.R. §§ 405.980(a)-(b). While through all four levels of the administrative appeal the services provided to the beneficiary were found to be not reasonable or necessary, at the Administrative Law Judge (ALJ) level, the ALJ reversed the overpayment determination by finding that the RAC had failed to show "good cause" to reopen the claim. Subsequently, the Departmental Appeals Board, Medicare Appeals Council (DAB-MAC) overturned the ALJ's decision, noting that the ALJ did not have jurisdiction to review the reopening of a claim.

Now that one Court of Appeals has agreed with the DAB-MAC's conclusion that the administrative appeals process cannot be used to challenge a RAC's decision to reopen a particular claim, providers appear to have little recourse in questioning any contractor's discretion in reopening a claim. Indeed, the only check on a contractor's compliance with the standards for reopening appears to lie in the Center for Medicare & Medicaid Services' review of its contractors.

¹ The *Palomar* opinion may be accessed [here](#).

Arnall Golden Gregory LLP serves the business needs of growing public and private companies, helping clients turn legal challenges into business opportunities. We don't just tell you if something is possible, we show you how to make it happen. Please visit our website for more information, www.agg.com.

This alert provides a general summary of recent legal developments. It is not intended to be, and should not be relied upon as, legal advice.