



Client Alert



Contact Attorneys Regarding
This Matter:

Glenn P. Hendrix
404.873.8692 - direct
404.873.8693 - fax
glenn.hendrix@agg.com

Daniel M. Formby
404.873.8786 - direct
404.873.8787 - fax
daniel.formby@agg.com

Diana Rusk Cohen
404.873.8108 - direct
404.873.8109 - fax
diana.cohen@agg.com

Arnall Golden Gregory LLP
Attorneys at Law
171 17th Street NW
Suite 2100
Atlanta, GA 30363-1031
404.873.8500
www.agg.com

Palomar Case Appealed, Potentially Limiting Provider Rights to Challenge Claim Reopening

The *Palomar Medical Center* case—involving the critical issue of whether providers have recourse when a Medicare contractor, such as a RAC, fails to follow the timeframes and rules for reopening old claims—continues to wind its way through the courts. As reported in an earlier [Client Alert](#),¹ a federal magistrate judge in the Southern District of California entered a report and recommendation in the case that providers do not have the right to challenge a Medicare contractor’s decision to reopen a claim on grounds that the contractor lacked “good cause” for the reopening.² A federal district court judge recently adopted the magistrate’s report and recommendation in full.³ On September 27, 2010, the provider in *Palomar* filed notice that it will appeal the District Court’s unfavorable ruling to the Ninth Circuit US Court of Appeals.⁴

The District Court Ruling

The District Court decision limits providers’ rights to challenge a Medicare contractor’s decision to reopen a claim. Under applicable Medicare regulations, a Medicare contractor must have “good cause” to reopen a claim that is more than one year and fewer than four years old (42 C.F.R. § 405.980(b) (2)). The District Court’s decision in *Palomar* essentially renders this provision toothless. Under the Department of Health and Human Services’ interpretation, backed by the court in *Palomar*, in the event a contractor reopens and denies a claim beyond the one-year reopening period, the provider may not appeal on ground that the contractor failed to state good cause for the reopening.

The District Court relied on a federal regulation providing that a “contractor’s [...] decision whether to reopen is binding and not subject to appeal” (42 C.F.R. § 405.980(a)(5)). The court observed that “Congress entrusted the [agency] with establishing regulations concerning reopening and the [agency] promulgated regulations that clearly and explicitly barred review of the reopening decisions through appeal.” The court further stated that it is not in a position to make the “policy decision” that providers should have the right to appeal a

1 http://www.agg.com/media/interior/publications/Hendrix_Formby-CAFedCtReportRecommendationRejectsRightProviders.pdf
2 *Palomar Medicare Center v. Sebelius*, No. 09cv605 BEN (NLS) (S.D. Cal. 2010) (Magistrate Judge’s report and recommendation to the court)
3 See *Palomar Medicare Center v. Sebelius*, No. 09cv605 BEN (NLS), slip op. (S.D. Cal. 2010)
4 See *Palomar Medicare Center v. Sebelius*, No. 09cv605 BEN (NLS) (S.D. Cal. 2010) (notice of appeal)



Client Alert

decision to reopen for good cause where regulations “explicitly say providers do not have [that] right.” Finally, the court held that the magistrate’s findings do not violate provider due process rights because providers may still challenge the determination that results from a reopening.

The Ninth Circuit Appeal and Broader Implications

The *Palomar* decision is not binding on other courts, although it will likely serve as persuasive precedent to judges in other districts. Providers should continue to use the “good cause” argument, where applicable, to challenge reopenings. Hopefully the Ninth Circuit’s decision in the case will bring better news for providers.

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.