

Health Headlines

April 23, 2012

HHS Files Petition to Supreme Court on Equitable Tolling Issue in Medicare Reimbursement Cases

On April 13, 2012, Health and Human Services Secretary Kathleen Sebelius filed a petition for writ of certiorari with the U.S. Supreme Court requesting that the Court overturn the D.C. Circuit's ruling that equitable tolling applies to the 180-day time limit for providers to file administrative appeals of final Medicare cost report payment determinations. *Sebelius v. Auburn Regional Medical Center*, U.S., No. 11-1231, petition for cert. filed Apr. 13, 2012.

At issue is the June 2011 decision, whereby the D.C. Circuit's three-judge panel ruled that equitable tolling is available for Medicare cost report appeals because a claim for Medicare payment is analogous to a contract claim. *Auburn Regional Medical Center, et al. v. Sebelius*, 642 F.3d 1145 (D.C. Cir. 2011). By way of background, the equitable tolling issue arose in the context of provider appeals of the SSI Ratio component of the disproportionate share hospital (DSH) adjustment for fiscal years 1987-1994. The providers did not appeal the SSI Ratio issue to the Provider Reimbursement Review Board (PRRB) until they learned of the issue in 2006 (as a result of the Baystate litigation), more than a decade after the 180-day window for appealing their Medicare cost reports had passed.

Although the appeals court found that equitable tolling is generally available under 42 U.S.C. § 1395oo(a), the D.C. Circuit did not actually apply it; instead, it remanded the case to the district court to determine whether equitable tolling is appropriate under the facts specific to this particular case. In the petition, Secretary Sebelius asserts, among other things, that the framework for resolving Medicare payment claims is through an administrative process and is not traditionally governed by general equitable principles "that go beyond the specific terms and limitations in the Medicare statute and implementing regulations." The Secretary also alleges that the D.C. Circuit ruling created a split in the circuits, because the Eleventh and Eighth Circuits have both concluded that the 180-day administrative appeal period has no exceptions since it is jurisdictional in nature. The Eleventh and Eighth Circuits, however, did not address the issue of equitable tolling.

For more information on the June 2011 D.C. Circuit decision, please see the *Health Headline* entitled "D.C. Circuit Rules Equitable Tolling is Available for Medicare Cost Report Appeals" published on July 25, 2011 and available [here](#). The Secretary's current petition to the Supreme Court is available [here](#).

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