

Supreme Court Upholds Regulatory Time Limitations on PRRB Appeals

On January 22, 2013, the United States Supreme Court unanimously upheld the Secretary of HHS's regulation establishing an absolute three-year limit for taking an appeal from a Notice of Provider Reimbursement ("NPR"). In *Sebelius v. Auburn Regional Medical Center*, No. 11-1231, several hospitals had argued that the limitations period should be equitably tolled because the agency had withheld the very information that gave rise to their appeals. But the Court rejected the hospitals' argument. The Court agreed with both the Secretary and hospitals that the 180-day statutory limitation for health care providers to appeal an NPR to the Provider Reimbursement Review Board ("PRRB") was not jurisdictional. It was permissible, therefore, for the Secretary, by regulation, to extend the 180-day limitation for up to three years for good cause. The Court rejected, however, the hospitals' argument that the limitations period is also subject to principles of equitable tolling, which would have allowed the hospitals to appeal within 180 days from the date on which they became aware of the withheld information.

The hospitals' underlying appeal concerned the adjustments to which they were entitled as disproportionate share hospitals ("DSH"). The DSH adjustment is determined in part by the percentage of patients served by the hospital who are eligible for Supplemental Security Income ("SSI") payments. This percentage is commonly known as the SSI fraction. In March of 2006, the PRRB held in *Baystate Medical Center*, PRRB Dec. No. 2006-D20, Mar. 17, 2006, that the Centers for Medicare and Medicaid Services ("CMS") had knowingly miscalculated the SSI fractions for the years 1993-1996 and failed to disclose its errors to interested hospitals, notwithstanding that hospitals were reliant on CMS's SSI data because they lacked the data necessary to make their own computations. The PRRB further determined that CMS's conduct resulted in a systematic understatement of hospitals' DSH adjustments and considerable underpayments to those hospitals. Within 180 days of the decision's publication, the hospitals filed appeals from their NPRs for the period 1987 through 1994, even though more than a decade had passed. The hospitals argued that it was appropriate to equitably toll the limitations period because CMS had withheld information necessary for the hospitals to take the appeal.

By statute, a provider has 180 days from the NPR to take an appeal to the PRRB, and the Secretary has, by regulation, provided that the time to appeal can be extended up to three years for a showing of "good cause." As the appeals in the case were filed more than three years after the NPR was mailed to the providers, the questions presented to the Supreme Court were (1) whether the 180-day period was "jurisdictional," in which case it could be extended neither by regulation nor by principles of equitable tolling, and (2) if not, whether Congress intended the limitations period to be subject to equitable tolling.

The Court first held that the 180-day limit is not "jurisdictional" and that the Secretary's regulation extending the time for good cause was permissible. The Court also upheld as reasonable the Secretary's position that the 180-day period cannot be extended beyond three years in any circumstance because Congress had not authorized the principle of equitable tolling in connection with the limitations period for filing PRRB appeals. With respect to the hospitals' argument that the period should be subject to equitable tolling, the Court found that there was no presumption of equitable tolling of time limitations for taking administrative appeals. The Court noted, moreover, that Congress had amended the statute six times subsequent to the Secretary's rule prohibiting any extension of the deadline beyond the three-year period provided by regulation, and in each instance Congress left untouched the 180-day limitation and the Secretary's rule.

The holding in *Auburn Regional Medical Center* highlights the finality of the limitations period in the PRRB appeal regulations. Even when hospitals are not aware of information that materially impacts their ability to

challenge their amount of program reimbursement, they still will be required to raise any dissatisfaction with their payments within 180 days of the NPR or within three years of the NPR if they can demonstrate good cause. Indeed, the Supreme Court based its decision, in part, on the fact that hospitals are sophisticated institutional providers and each “can concentrate on a single NPR, its own.” The Supreme Court’s decision makes it all the more important that each hospital complete a full and timely review of its NPR and strive to obtain underlying data from CMS or its contractors in a timely fashion.

If you have any questions or would like to learn more about the issues raised by the Court in this decision, please contact your usual Ropes & Gray advisor.

For the full text of the Supreme Court’s decision in *Sebelius v. Auburn Regional Medical Center*, please [click here](#).