



Palomar Medical Center v. Sebelius, 693 F.3d 1151 (9th Cir. 2012)

Topics Covered: Medicare, Payment Issues (for Physicians) and Regulatory Burdens

Outcome: Very Unfavorable

Issue

The issue in this case was whether regulations of the United States Department of Health and Human Services (HHS) that govern reopening decisions under the Medicare Recovery Audit Contractor (RAC) Program were valid.

AMA Interest

The AMA opposes RAC Program physician audits.

Case Summary

A patient had his hip removed and replaced with a prosthetic device at Palomar Medical Center. Pursuant to his physician's direction, the patient was admitted to Palomar's inpatient rehabilitation unit. Palomar then submitted a Medicare claim for the rehabilitation services rendered to the patient, which was paid.

More than a year after the claim had been paid, HHS, pursuant to the Medicare Recovery Audit Contractor (RAC) Program, reopened the claim and determined that Palomar had not been entitled to payment for the patient's rehabilitation services, as these services could have been rendered at a skilled nursing facility (SNF), instead of the hospital rehabilitation unit.

Palomar appealed the RAC contractor's actions through several administrative levels. It contended that, under the Medicare regulations, after one year following payment a claim cannot be reopened except for good cause and good cause did not exist here. One of the administrative bodies, an administrative law judge (ALJ), agreed with Palomar that the failure to show good cause voided the reopening. However, a higher administrative review body (the Medicare Appeals Council) found that the ALJ had been unauthorized to question the failure to show good cause. Therefore, HHS ultimately concluded that the overpayment determination had been correct. Since Palomar remained a participant in the Medicare program, HHS recouped the money required to restore the alleged overpayment.

Palomar then sued HHS in the United States District Court for the Southern District of California, contending that the reopening had been procedurally defective because good cause had not been shown for reopening the claim. Palomar also contended that HHS had deprived it of due process by failing to provide a forum in which it could contest the legality of the reopening. The parties made cross-motions for summary judgment, which were referred to a federal magistrate

judge, who recommended an order in favor of HHS. The trial judge upheld the magistrate's recommendation in its entirety, and summary judgment was entered in favor of HHS.

Palomar appealed to the United States Court of Appeals for the Ninth Circuit. Oral argument was heard on March 7, 2012.

On March 14, 2012, the Ninth Circuit called for additional *amicus* briefs, which are to address, primarily, the question of whether the federal courts have jurisdiction to enforce the agency's compliance with the good cause standard for reopening.

On August 22, 2012, the Ninth Circuit found that HHS had interpreted its regulations correctly and affirmed the district court decision in favor of HHS. Palomar petitioned for rehearing *en banc*, but that motion was denied on January 29, 2013.

Litigation Center Involvement

The Litigation Center, along with the California Medical Association, filed an *amicus curiae* brief in support of Palomar.

The Litigation Center, along with the nine state medical societies in the Ninth Circuit, filed a second *amicus* brief, responding to the court's request.

The Litigation Center, along with the nine state medical societies in the Ninth Circuit, filed a third *amicus* brief, to support the petition for rehearing.

United States Court of Appeals for the Ninth Circuit first *amicus* brief

United States Court of Appeals for the Ninth Circuit second *amicus* brief

United States Court of Appeals for the Ninth Circuit third *amicus* brief