

# PUBLICATION

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## Supreme Court: Providers' Appeal Period Not Extended by Doctrine of Equitable Tolling [Ober|Kaler]

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Under the Medicare statute and implementing regulation, providers have 180 days from the issuance of a Notice of Program Reimbursement (NPR) in which to file an appeal to the Provider Reimbursement Review Board (PRRB). This time limit has been strictly applied, subject to a narrow exception spelled out in the regulation for “good cause.” Providers have argued, however, that this time limit should be extended or “tolled” under certain circumstances, such as where there are allegations that the government or intermediaries made mistakes, deliberately did not reveal their mistakes, and effectively prevented the providers from becoming aware of the mistakes. The providers, however, have now lost that argument: On January 22, the Supreme Court held that the doctrine of equitable tolling does not apply in these circumstances. *Sebelius v. Auburn Reg'l Med. Ctr.*, No. 11-1231 (U.S. Jan. 22, 2013).

The *Auburn* case involved hospitals that tried to appeal their DSH determinations for fiscal years 1987-1994, after the PRRB ruled in the *Baystate Medical Center* case that there were flaws in the data underlying the DSH payment determinations. The PRRB dismissed the hospitals' appeals as untimely, and the United States District Court for the District of Columbia agreed. The United States Court of Appeals for the District of Columbia Circuit, however, agreed with the providers and held that equitable tolling was available under the statute. The government then appealed to the Supreme Court, which reversed the Court of Appeals.

The Supreme Court first held that the 180-day time limit for filing appeals is not jurisdictional but rather is a claims filing deadline, and ruled that limit can be extended by the Secretary through regulation. The Court noted that the Secretary's regulation, in fact, did extend this period, but only for “good cause” and, even then, barred any extension being granted more than 3 years after the NPR. The Court then agreed with the government that the Secretary had the discretion to set an outer limit of 3 years for appeals to the PRRB. The Court concluded that the doctrine of equitable tolling does not alter this result, saying that the Court lacked the authority to undermine the appeals regime set out in the regulation unless the Secretary's position is, arbitrary, capricious or manifestly contrary to the statute. The Secretary's regulation, the Court ruled, survives under this deferential standard.

### Comments

The Supreme Court's *Auburn* decision comes as no great surprise. The Court has, in the past, been extremely deferential to the Secretary's positions regarding jurisdiction and appeals, even in the face of alleged inequities. See *Your Home Visiting Nurse Services, Inc. v. Shalala*, 525 U.S. 449 (1999) (upholding the Secretary's arguments regarding her reopening authority and providers' ability to challenge reopening decisions). Thus, providers must always be mindful of the Secretary's time limitations for filing appeals and should consider appealing if there is even mere doubt about the Secretary's or Intermediary's position.