



SEPTEMBER 2012

## In this Issue...

- [Medicare Providers Cannot Challenge RAC Decision to Reopen Old Claims](#)
- [IRS Notice Re Single Member LLCs](#)

---

### MEDICARE PROVIDERS CANNOT CHALLENGE RAC DECISION TO REOPEN OLD CLAIMS

The Ninth Circuit recently held that providers cannot challenge whether a Medicare Recovery Audit Contractor (RAC) has good cause to reopen a claim between one and four years old.

#### Background

Palomar Medical Center (Palomar) is an inpatient rehabilitation facility located in Escondido, California. In June 2005, Palomar provided inpatient rehabilitation services to a Medicare patient who had undergone a total right hip arthroplasty (the Patient). On July 27, 2005, the Medicare fiscal intermediary paid Palomar approximately \$8,000 for the services it provided to the Patient.

Nearly two years later, the RAC for California conducted an audit of Palomar's Medicare claims. The RAC requested that Palomar produce medical records and documentation to support the medical necessity of the Patient's 2005 inpatient stay. In its cover letter, the RAC stated that the request was "due to a recent review and discovery of potential overpayment of your Medicare paid claim."

Palomar complied with the RAC request and produced the Patient's medical charts. Following review of the records, the RAC determined that the Patient could have been treated on an outpatient basis and that the inpatient services provided by Palomar were "not reasonable and necessary." The RAC characterized the entire claim payment amount as an overpayment and requested that Palomar refund the overpayment to the RAC.

Palomar challenged the RAC's decision through four levels of the administrative process. In addition to arguing that the inpatient services were medically necessary, Palomar also contended that Medicare regulations required the RAC to establish the existence of "good

cause" before reopening claims between one and four years old. Palomar argued that the RAC failed to make any showing of good cause to reopen the then two-year old claim and that the RAC's overpayment determination should be reversed on this basis alone. Palomar lost its administrative appeals and chose to pursue the good cause issue before the United States Court of Appeals for the Ninth Circuit.

### **The Ninth Circuit's Ruling**

By order dated September 11, 2012, the Ninth Circuit held that providers cannot challenge whether a RAC has good cause to reopen a claim between one and four years old. The court explained that the decision to reopen a claim under the Medicare Act is discretionary and not subject to appeal. The court further held that the good cause standard for reopening claims is enforced internally by the Centers for Medicare & Medicaid Services (CMS), and that providers have no ability to contest whether a RAC has demonstrated good cause for purposes of reopening such a claim.

[Robinson & Cole's Health Law Group](#) has experience representing providers in connection with external and internal financial audits. For assistance, please contact any member of the Health Law Group.

---

### **IRS NOTICE RE SINGLE MEMBER LLCs**

On July 31, 2012, the Internal Revenue Service (IRS) issued guidance via Notice 2012-52 (Notice) to clarify the treatment of a charitable donation to a limited liability company, organized within the United States, whose sole member is a tax-exempt 501(c)(3) organization (SMLLC). Unless the SMLLC elects to be treated as a corporation, it is disregarded for U.S. federal income tax purposes. SMLLCs are not disregarded for employment and certain excise tax purposes and are generally not disregarded for state law purposes. The activities of a disregarded SMLLC are reported on the sole member's annual federal informational return (Form 990 or Form 990-PF) as if the sole member had engaged in those activities directly. Prior to the issuance of the Notice, however, the tax treatment of amounts donated directly to an SMLLC remained unclear.

The Notice clarifies that charitable contributions made to an SMLLC are treated by the IRS under the same rules that apply to contributions made to the SMLLC's member. Consequently, if all charitable requirements are met, a donor's contribution to an SMLLC is treated for purposes of the donor's U.S. federal income tax return as a contribution to the 501(c)(3) that owns the SMLLC. To avoid unnecessary inquiries, the IRS encourages the charity to disclose, in an acknowledgement or another statement, that the SMLLC is wholly owned by the charity and treated as a disregarded entity.

The Notice's guidance is effective for all charitable contributions made on or after July 31, 2012. In addition, taxpayers are able to rely on the Notice prior to such date for all taxable years for which the period of limitation on refund or credit has not expired.

---

If you have questions about any of these topics, please contact a member of Robinson & Cole's [Health Law Group](#).

[Lisa M. Boyle](#)

[Theodore J. Tucci](#)

[Stephen W. Aronson](#)

[Michael J. Kolosky](#)

[Charles W. Normand](#)

[Pamela H. Del Negro](#)

[Teri E. Robins](#)

[Brian D. Nichols](#)

[Susan E. Roberts](#)

[Meaghan Mary Cooper](#)

[Eric R. Greenberg](#)

---

*© 2012 Robinson & Cole LLP. All rights reserved. No part of this document may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior written permission. This document should not be considered legal advice and does not create an attorney-client relationship between Robinson & Cole and you. Consult your attorney before acting on anything contained herein. The views expressed herein are those of the authors and not necessarily those of Robinson & Cole or any other individual attorney of Robinson & Cole. The contents of this communication may contain attorney advertising under the laws of various states. Prior results do not guarantee a similar outcome.*

