



**November 20, 2012**

## **HLB to Present Oral Argument to the U.S. Supreme Court on Behalf of Medicare DSH Hospitals**

On December 4, 2012, HLB Attorney Robert Roth will argue before the U.S. Supreme Court on behalf of seventeen hospitals that participate in the Medicare Program in *Sebelius v. Auburn Regional Medical Center, et al.*, U.S. Supreme Court, No. 11-1231.

This case concerns the Medicare disproportionate share hospital (DSH) adjustment, which provides additional reimbursement to hospitals serving large numbers of low income patients. The Hospitals allege that the Secretary calculated their DSH payments for fiscal years 1987-1994 using information hidden from the Hospitals, which the Secretary knew was incomplete or incorrect, while unlawfully concealing that the information was, in fact, inaccurate. After the inaccuracy of the concealed information was disclosed in 2006, many years after the close of the first fiscal year at issue, the Hospitals filed administrative appeals seeking recalculation of their DSH payments, arguing that the 180-day time period for appealing Medicare payments should be equitably tolled.

The issue in the case is whether providers can seek administrative and judicial correction of Medicare underpayments resulting from deliberately concealed actions by CMS where those actions are not uncovered until after the deadline to seek review by the Provider Reimbursement Review Board (PRRB) has passed.

On June 24, 2011, the United States Court of Appeals for the District of Columbia Circuit (a) reversed the District Court's dismissal of the case for lack of subject matter jurisdiction and (b) found that equitable tolling is available to toll the time to file appeals under Medicare Part A appeal statute, 42 U.S.C. §1395oo(a). *Auburn Regional Medical Center, et al., v. Sebelius*, 642 F.3d 1145 (D.C. Cir. 2011). The Secretary's petitions for rehearing were denied on December 20, 2011. On June 25, 2012, the Supreme Court granted the Secretary's petition for a writ of certiorari.

For additional information about this case, including attending the oral argument, please contact Robert Roth in Washington, D.C. at 202.580.7700, or John Hellow in Los Angeles at 310.551.8111.