

# Health Care Litigation, Reimbursement and Regulation

## Overview

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**"They are highly qualified, accessible and responsive. The quality of work is fabulous, and the juniors there are also very good."**

*- Chambers USA 2019  
(Illinois, Healthcare) survey  
response*

Katten's Health Care Litigation, Reimbursement and Regulation team members have spent their careers deeply immersed in the health care industry and have gained the experience and knowledge necessary to help clients assess, initiate, strategically navigate and resolve disputes in a complicated and oft-changing regulatory environment. We leverage that experience, coupled with our knowledge of the dispute resolution processes, to help clients assess the benefits and risks of avoiding or pursuing litigation in state or federal court, settling a dispute or seeking other forms of relief within the regulatory system. And our litigators do not practice in a silo but, rather, are core members of our broader Health Care group, working closely with attorneys from our Health Care Regulatory and Compliance and Health Care Transactions teams on our clients' most significant matters.

### Types of disputes

Our team represents a broad range of clients across the health and life sciences sectors in a wide range of disputes and investigations. We have litigated matters at the administrative agency level as well as in state and federal courts across the country, including in the US Supreme Court and in most federal circuit courts of appeals. We work closely with the Health Care Regulatory and Compliance and Health Care Transactions teams to assess and handle disputes involving a number of issues, including commercial disputes involving the health care industry, claims under the False Claims Act (FCA), cases involving allegations of fraud and abuse, alleged violations of the Anti-Kickback Statute, federal physician self-referral law (Stark Law), *qui tam* actions, reimbursement issues, and many others.

Our Health Care litigators are frequently involved in civil and criminal actions brought by government enforcement agencies, arising from investigations into Medicare fraud, whistleblowing, false claims and the like. The team includes former federal prosecutors who specialized in health care fraud and abuse matters when they served in US Attorneys' Offices and in the US Department of

Justice, which proves valuable to clients as we engage with government attorneys in high stakes matters.

## Our Experience

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- Counsel various hospitals, academic medical centers and independent medical practices clients in False Claims Act cases and related investigations. Involve allegations of duplicate billing, billing for medically unnecessary services, billing for services by unlicensed providers, violations of the Stark Act and Anti-Kickback Statute, and billing for physician services in teaching hospitals, school-based health care services, early intervention services and personal care services in violation of applicable requirements.
- Represented large municipality and a large health care system in a *qui tam* False Claims Act case, alleging that defendants submitted or caused the submission of false Medicaid claims for services alleged to have been provided in violation of Medicaid regulatory requirements, and also alleging a "reverse false claim" cause of action pursuant to 31 U.S.C. § 3729(a)(1)(G).
- Represented health system in putative *qui tam* case alleging our client defrauded the government by engaging in a widespread practice of submitting knowingly false claims for the work of nurse practitioners. The case was dismissed as a sanction for misconduct by plaintiff.
- Counseled academic medical center in challenging a threatened State recoupment of millions of dollars' worth of Medicaid payments received by the client's long-term home health program. We negotiated a settlement of less than one percent of the initial audit finding.
- Represent hospital system in trial against the New York State Office of the Medicaid Inspector General. Involves novel issues of what services provided to undocumented immigrants are reimbursable under Medicaid.
- Represent hospital system in a DOJ civil investigation of Medicaid billing practices relating to services furnished to undocumented immigrants.
- Counsel health system on compliance matters and internal investigations. We have advised this client on numerous self-disclosures, assisted in the development of a new compensation review process, advised on the structure of a new physician subsidiary, advised on numerous regulatory issues, and served as litigation counsel in a False Claims Act case.

- Represent PSO in preparing *amicus curiae* briefs in cases involving the scope of privilege protections afforded under PSQIA. Includes a case of national importance regarding the scope of confidentiality/privilege protections afforded to hospitals and other licensed health care providers as applied to patient adverse incident reports and peer review materials under PSQIA.
- Represent national for-profit hospital network in responding to a CID from the DOJ regarding potential violations of the False Claims Act regarding reimbursements for government health care programs, as well as potential improper self-referrals and kickbacks.
- Represent health care system in extensive investigation conducted by the New York Attorney General and DOJ into suspected Medicare/Medicaid fraud in the distribution and related marketing of a pediatric prophylactic.
- Primary outside counsel to large health care system in various matters. We defend client in suspected Medicare/Medicaid fraud and False Claims Act investigations, assist regarding supplemental Medicaid payments, oppose government audits, and created and implemented a corporate-wide compliance program. We also helped effect a major reorganization of affiliate relationships; prosecute Medicare appeals; and counsel on HIPAA and health care privacy matters, provision of health services in correctional facilities, and a threatened suit against the State regarding Medicaid payments.
- Represented hospital system in FCA investigation conducted by the US Attorney's Office for the District of Vermont. Inquiry focused on the use of a certain electronic health record system at a correctional health facility that was supposed to monitor inmates who took specific types of heat-sensitive medications. No action was taken against our client. The software vendor settled the FCA allegations for \$155 million.
- Represent hospital staffing, administrative support and management company in federal False Claims Act *qui tam* litigation alleging a nationwide scheme to fraudulently bill anesthesiology services as "medically directed" instead of the less expensive "medically supervised."
- On behalf of a major university, conduct internal investigation of several whistleblowers' claims that university's faculty dental clinic was performing medically unnecessary services, submitting fraudulent and up-coded bills and failing to comply with state and federal infection control practices.
- Represented state board of pharmacy in lawsuit brought by pharmacy benefit managers (PBMs), claiming that certain state regulations of pharmacies and

their relationships with PBMs are preempted under the Employee Retirement Income Security Act of 1974 and Medicare Part D.

- Represented municipal department of education (DOE) in two FCA cases alleging client fraudulently billed Medicaid for certain services provided to disabled schoolchildren. The first case was settled in 2009 in the US District Court for the Northern District of New York (NDNY) and the US District Court for the Southern District of New York (SDNY) granted our motion to dismiss in the second case. The US Court of Appeals for the Second Circuit affirmed the dismissal of the relators' claims in an unpublished decision.
- During the settlement negotiations for the above case in the NDNY, DOJ informed municipality that a *qui tam* case had been filed challenging DOE's Medicaid billing for counseling services; the allegations in this case were expressly carved out of that settlement agreement. We assisted the municipality's law department and DOE in negotiating a settlement, which was finalized in January 2014.
- Defended large, academic medical center in False Claims Act lawsuit alleging violations of the Medicare teaching physician rules. The complaint sought tens of millions of dollars in damages. We obtained dismissal by the federal district court and ultimately achieved an extremely favorable settlement of all claims against our client.
- Defend hospital clients in Medicare appeals before the Department of Health and Human Services Provider Reimbursement Review Board. Cases involve issues such as cost report audit adjustments, graduate medical education and indirect medical education payments, reimbursement for physician services, bad debt reimbursement, and disproportionate share hospital payments.
- Defended pharmacy store chain against subpoena issued by State of Illinois seeking production of incident reports that had been submitted to component PSO created by client pursuant to PSQIA. When client refused to produce reports, we served as PSO consultant to litigation counsel and authored an *amicus* brief filed on behalf of 20 PSOs and health care trade associations supporting our client. Decision dismissing the State's lawsuit was affirmed on appeal; this was the first state appellate court case in the country to interpret and apply provisions of PSQIA which render qualified information non-discoverable and non-admissible in state and federal court proceedings.

## Key Contacts

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## Recognitions

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*Recognized or listed in the following:*

- *Best Law Firms*
  - Health Care Law
    - National, 2013–2024
    - Chicago, 2011–2024
    - Dallas/Ft. Worth, 2020–2024
    - New York, 2011–2024
- *Chambers USA*
  - Healthcare: Highly Regarded
    - Nationwide, 2021–2023
  - Healthcare
    - Illinois, 2006–2023
    - New York, 2006–2023
    - Texas, 2019–2023
- *The Legal 500 United States*
  - Healthcare
    - Service Providers, 2016–2023