

Regulatory and Government Affairs

Healthcare

Contacts

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The healthcare industry continues to grow, and so does government oversight. The industry is undergoing a significant reorganization, fueled in part by new technologies, changing economics and shifting demographics. This fast-evolving environment presents both challenges and opportunities for everyone in the healthcare industry. Garvey Schubert Barer's lawyers provide the comprehensive legal services you need to meet these challenges and capitalize on these opportunities.

For example, we help our clients respond to audits by government payors. We help clients create, implement and maintain robust regulatory compliance programs and policies. We guide clients through the often complex steps needed to obtain licensure and certification they need to secure prompt and full reimbursement from government and private payors. We keep clients updated on federal and state regulations affecting the healthcare industry generally and your business specifically.

When you have a legal problem, we lay out your options to help you make an intelligent business decision how to proceed.

Full Range of Healthcare Clients

Our healthcare clients include public, tax-exempt and for-profit healthcare organizations throughout the western United States, such as the following:

- ▶ Hospitals (including rural and critical access hospitals)
- ▶ Long-term care facilities
- ▶ Ambulatory surgery centers
- ▶ Physicians and physician organizations
- ▶ Imaging facilities
- ▶ Local and national clinical laboratory and pathology companies
- ▶ Genomic laboratories
- ▶ Dialysis companies
- ▶ Alternative healthcare providers
- ▶ Hospital associations
- ▶ Medical device manufacturers
- ▶ Healthcare professional placement companies
- ▶ Third-party payors and integrated delivery systems

Because of our firm's extensive experience and expertise in healthcare law, Garvey Schubert Barer is considered one of the top-tier law firms serving healthcare clients in the western United States.

Healthcare organizations are businesses and face the same corporate legal needs as businesses in other industries. These needs include everything from obtaining advice on corporate structuring, to resolving employment disputes, to negotiating and drafting contracts. Whatever your corporate needs, our healthcare lawyers will capably meet them with skill and creativity.

Acquisitions, Consolidations and Mergers

As it grows, the healthcare industry continues to undergo a major restructuring. This restructuring has increased both the number and the significance of acquisitions, consolidations and mergers of healthcare entities, facilities and programs. We help you negotiate structure and document a transaction in ways that minimize or eliminate your legal problems while maximizing the transaction's value to you.

Frequently these transactions raise tax, labor, licensing, antitrust and reimbursement issues. We provide practical, knowledgeable advice on all of these aspects of your transaction.

Our services include negotiating with government agencies on your behalf and presenting your strongest case to them.

Antitrust

Healthcare organizations often make business decisions that raise antitrust concerns. These decisions can involve medical staff privileges; exclusive contracting; group purchasing; managed care plans and integrated delivery systems; clinical turf battles; pricing decisions; and the structuring of joint ventures, acquisitions, consolidations and mergers.

Our lawyers identify the antitrust issues and advise you of the legal consequences of a particular course of action. Often we can recommend alternative ways to achieve your business objectives without violating the antitrust laws.

If you become involved in antitrust litigation, Garvey Schubert Barer has veteran antitrust lawyers to represent you. Our services include negotiating with the U.S. Department of Justice, the Federal Trade Commission and state attorneys general.

Bankruptcy

Our bankruptcy clients include healthcare organizations whose financial problems become so severe they must file for bankruptcy. We also represent healthcare organizations that are creditors in bankruptcy proceedings involving healthcare suppliers or payors. Our services include representing clients in out-of-court workouts, bankruptcy proceedings and related litigation.

Bond and Other Capital Financing

Garvey Schubert Barer serves as corporate counsel for taxable and tax-exempt issues of revenue bonds. We also serve as issuers' and underwriters' counsel in partnership syndications. We also provide legal representation in connection with venture capital placements.

Contractual Relationships

Most businesses — including those in healthcare — depend heavily on contractual relationships with customers, vendors and other third parties. Because our services are informed by real-world experiences in healthcare transactions and operations, we provide you practical as well as legal insight to help you achieve your business objectives. We help you successfully negotiate and properly structure your contracts and, before you sign a contract, we can review it to make sure it will not create legal or business problems for you. Because our healthcare clients are exceptionally diverse, we have advised these clients on virtually every type of contract, including those involving

- ▶ Professional medical services
- ▶ Purchase of medical equipment and supplies
- ▶ Acquisition of billing and collection, data processing and information retrieval systems
- ▶ Labor agreements

Federal and State Government Relations

Because of Garvey Schubert Barer's healthcare law expertise, our lawyers are often asked to draft and analyze proposed legislation and regulations affecting the healthcare industry in general and clients in particular. We also assist in preparing testimony on proposed legislation and regulations and represent our clients' positions before legislative and administrative bodies. We assist insurance plans involved in litigation with state and federal agencies over payment and policy issues.

Federal and State Taxation

Federal and state tax laws can be ambiguous, creating different options, each with a different outcome. By laying out your options and the consequences of each, we help you choose the optimal decision for your business.

Our clients include tax-exempt, governmental and for-profit healthcare organizations. In addition to advising you of the tax consequences of a particular course of action, we can represent you in tax audits and proceedings, both those in which you must defend yourself against a proposed assessment and those where you seek a refund.

Garvey Schubert Barer's other tax-related services include obtaining advance private letter rulings and assisting tax-exempt clients in obtaining and maintaining tax-exempt status.

Fraud and Abuse Regulation

In recent years, government efforts to detect and prosecute healthcare fraud and abuse have become aggressive. Billing errors, once viewed as mistakes, are now pursued as fraud and false claims, with the added specter of criminal charges, debarment, substantial fines and even imprisonment.

Regulations involving fraud and abuse are complex and numerous. They include self-referral prohibitions (Stark law); regulatory compliance; state and federal antikickback statutes with "safe harbors"; other federal regulations; and even less formal federal and state enforcement policy statements by regulatory authorities.

To help you limit your vulnerability to fraud and abuse problems, we analyze your joint ventures, leases, provider contracts and other transactions and relationships. Our analysis includes advice on what steps, if any, you should take to comply with applicable fraud and abuse regulations.

Health Insurance and Managed Care

Health insurers and related entities continue to play major roles in today's healthcare industry. For our health insurer and managed care plan clients, we provide advice about a wide range of legal issues. These include regulatory requirements, relationships with healthcare providers, complex group premium arrangements, antitrust and tax issues, ERISA requirements, and fiduciary and co-fiduciary liability. We also provide extensive litigation services.

HIPAA

Garvey Schubert Barer has proven expertise in addressing both privacy and security issues under HIPAA. Since the implementation of HIPAA regulations, we have represented both large and small hospitals in handling a wide range of compliance matters. Additionally, we have had numerous engagements representing healthcare providers in Washington, Oregon and California in resolving complaints filed with the Office of Civil Rights, the federal agency charged with enforcement of the HIPAA Privacy Rule.

During the rollout period for the HIPAA privacy regulations, one of our attorneys was retained by the Washington State Medical Association (WSMA) to provide member education to hundreds of doctors and medical staff. When the HIPAA Security Standards were being implemented, WSMA once again retained him to provide additional educational seminars for its membership.

Immigration

We have considerable experience representing regional healthcare systems. We help them obtain employment authorization and permanent resident status for physicians, nurses and other critical personnel. Our services also include obtaining waivers of foreign residence requirements and employment in medically underserved areas.

Integrated Delivery Systems, Joint Ventures and Other Collaborative Arrangements

In the current healthcare environment, the number and importance of collaborative arrangements are increasing. These include integrated delivery systems, employment models, foundation models, PHOs, MSOs and contract-based relationships. We analyze

and then structure these arrangements to produce the greatest benefit for you. Similarly, we analyze and structure joint ventures for the optimal operation of collaborative healthcare programs and services.

Our firm's services include negotiating contractual relationships; documenting transactions and financing arrangements; and, most importantly, ensuring that transactions comply with tax, antitrust, licensing, fraud and abuse, and other Medicare and Medicaid laws.

Intellectual Property and Technology

Protecting and enforcing intellectual property rights are critical to the success of many healthcare organizations. Our firm's IP lawyers help healthcare clients protect service marks and other intellectual property. On behalf of clients, we also negotiate technology transactions, such as acquisitions of computer systems.

Labor Relations and Employment

Labor and employment disputes can be costly and can significantly disrupt your operations. Our lawyers help you take steps to prevent these disputes, or at least minimize their likelihood. When a dispute arises, we help you resolve it.

Services Garvey Schubert Barer provides to help you avoid labor and employment lawsuits include the following:

- ▶ Developing sound employment policies for your organization
- ▶ Keeping you current on changing and emerging areas of the law, such as drug testing and the Americans with Disabilities Act
- ▶ Defending you against employment discrimination, wrongful termination and wage and hour claims
- ▶ Defending you against charges of unfair labor practices
- ▶ Helping you implement workforce reductions without exposing you to litigation
- ▶ Counseling you on how to respond to employee grievances
- ▶ Negotiating collective bargaining agreements

Like many of our clients, you may want to acquire or consolidate healthcare programs. These complex transactions can raise labor law issues we can help you address.

Another service our firm provides is seminars on labor and employment issues important to employers. In addition to Garvey Schubert Barer's lawyers, presenters often include management and staff from our clients. They provide a unique perspective on the kind of labor and employment issues you face.

Litigation and Dispute Resolution

Legal Expertise, Extensive Experience and Knowledge of Your Industry and Business

Our lawyers bring to these matters years of experience and a comprehensive understanding of the healthcare system. We approach these matters with a knowledge base of not only the legal system but also the healthcare system which enables us to act expeditiously and cost-effectively for you.

We handle a full range of healthcare litigation matters including those involving

- ▶ Medicare and Medicaid reimbursement
- ▶ Response to government audits
- ▶ Professional liability defense
- ▶ The full spectrum of federal, state and local tax controversies and appeals
- ▶ Abuse and neglect
- ▶ HIPAA
- ▶ Contractual disputes
- ▶ Defense of *qui tam* and governmental investigative actions

- ▶ Immigration
- ▶ Labor and employment
- ▶ Certificate of Need

Clients Across the Healthcare Industry

Our client base is broad. We represent healthcare entities, provider groups and individual providers, including hospitals, ambulatory surgery facilities, continuing care providers, managed care organizations, health insurers, clinical laboratories, physicians, alternative practitioners, pharmacists, nurses and other healthcare personnel.

Representing Clients Before Both Courts and Agencies

Healthcare litigation may be in the administrative setting as well as the court system, often crossing over between the two. Our extensive experience in both arenas allows us to effectively navigate these often complex waters.

Among these representations have been

- ▶ Recovery of \$6.1 million and forgiveness of \$14 million for 28 hospitals in Washington State against which DSHS had wrongly applied federal audit rules
- ▶ Reversal of a Washington Department of Revenue ruling that payments to hospitals under the federal CHAMPUS program were subject to B&O tax
- ▶ Reversal of findings of neglect against a provider of in-home care to developmentally disabled adults in both Washington and Oregon
- ▶ Recovery of \$8 million from the State of Alaska Medicaid program which had refused to follow change-of-ownership reimbursement rules
- ▶ Successful defense against an Alaska Medicaid audit claim of more than \$5 million
- ▶ Dismissal of an abuse finding against an employer of developmentally disabled adults
- ▶ Obtaining a finding of insufficient evidence and dismissal of an EEOC and state agency claim against a continuing care community in Oregon alleging national origin discrimination
- ▶ Acquittal at trial of a physician charged with Medicaid fraud
- ▶ Obtaining agreement not to prosecute a healthcare provider accused of violating the False Claims Act

Preventive Services

To help clients avoid litigation we provide preventive services. Among other things, we help clients prepare for government audits; train them on HIPAA compliance, fraud and abuse and other regulatory compliance; and advise them on charting, record keeping, human resources and other risk management issues.

When you have a healthcare litigation matter, Garvey Schubert Barer has the experience and expertise to help you resolve it expeditiously and economically.

Medical Staff Relationships

All hospitals need bylaws, rules, regulations and policies that are carefully documented and which unambiguously spell out the rights and obligations of medical staff. We help you develop and maintain these documents to establish workable governance for your organization. We also counsel you during the credentialing process, when you extend clinical privileges, and at all stages of peer review so that if your decision to grant or deny medical staff privileges is challenged, you will be in the best possible position to defend your decision-making process.

Medical Waste Disposal

Healthcare organizations must meet stringent requirements for disposal of medical wastes, hazardous materials and toxic chemicals. Our lawyers help you understand your obligations under these requirements and other environmental regulations. We also assist you in creating and implementing internal environmental compliance procedures.

Provider Reimbursement

Provider Representation

As a healthcare provider, you want and need prompt reimbursement from Medicare, Medicaid and other payors. We help you obtain Medicare and Medicaid provider status. Through audits and claims evaluations, and denial and exception reviews, we also help you secure reimbursement from third-party payors by challenging their denials of your legitimate claims. Our attorneys have in-depth experience presenting provider claims to the Provider Reimbursement Review Board and Medicaid rate agencies.

We have successfully challenged defects in the State Plan Amendment process and represented healthcare organizations in Boren Amendment litigation. If you are audited by the government or third-party payors, we can draw on our vast experience defending other providers in the audit process. Our services include negotiating contractual relationships, dealing with federal and state administrative agencies, providing advice about patient transfer and "dumping" issues, and keeping you informed of pending legislation.

Representation of Third-Party Payors

We represent third-party payors, including health insurers, Medicare Advantage plans, third-party administrators and self-funded ERISA plans in structuring and advising relationships with healthcare providers. We also represent payors in disputes with healthcare providers, including class actions.

Real Estate

In one way or another, real estate issues touch every healthcare organization. We provide a full range of real estate services for you. For example, we address land use issues, negotiate with lenders for financing, resolve problems arising during construction, form condominiums, and negotiate and enforce leases.