

OUR PRACTICE

Health Systems/Hospitals

Baker Donelson represents and advises individual hospitals and health systems (both proprietary and not-for-profit) in a wide variety of regulatory, operational, and strategic business matters. We recognize the increasingly stringent government enforcement landscape that defines today's health care industry. Our team is deeply committed to providing comprehensive legal representation to hospitals and health systems, leveraging our collective experience across a broad range of areas, including corporate law, tax-exempt status, regulatory compliance, litigation, clinical research, managed care, government enforcement and investigations, and employment law.

We assist teaching and community hospitals, their various subsidiaries, and their parents in a range of reimbursement matters, including counseling regarding payment rules and pursuing claims on their behalf in administrative and judicial proceedings. Baker Donelson's experience with reimbursement and regulatory issues includes advice regarding conditions of participation, payment, and coverage, as well as assisting providers to determine payment rules, conduct self-audits, and identify and report overpayments.

Since 1971, Baker Donelson attorneys have been representing clients in Medicare payment disputes. We regularly represent hospitals and other providers in individual and group appeals before the Provider Reimbursement Review Board and in the federal courts. We handle a wide range of issues, including: Wage Index; Direct and Indirect Medical Education Costs; Disproportionate Share Hospital (DSH) Adjustments; Provider-Based Status; Provider Taxes; Nursing and Allied Health costs; Medicare Bad Debts; Related Party Issues; Specialized Status Qualification (e.g., sole community hospital or Medicare-dependent hospital status); and 340B Drug Program issues.

We also represent hospitals on Part A and Part B claims disputes before Medicare administrative contractors (MACs) and administrative law judges (ALJs). Baker Donelson attorneys are experienced in defending all types of Medicare providers and suppliers against the denial of Part A and Part B claims resulting from local contractor audits, Recovery Audit Contractor (RAC) audits, or Program Safeguard Contractor (PSC) audits.

We also assist hospital clients with the development and implementation of compliance programs that follow the standards in the Office of Inspector General's Compliance Program Guidance for Hospitals and comply with the federal sentencing guidelines. We regularly support hospitals in conducting their compliance effectiveness reviews. We often provide regulatory counseling on matters related to fraud and abuse, the Stark Law, and state regulatory compliance, particularly in the context of transactions and other physician integration arrangements. Our advisory services extend to a wide range of matters, including HIPAA and EMTALA compliance, as well as responding to inquiries and investigations.

The Firm's representations include hospitals in connection with comprehensive health planning matters such as a certificate of need (CON) application, as well as in obtaining determinations that projects may be undertaken without a CON. Baker Donelson has a long-standing background representing hospitals in matters relating to state pricing regulation.

Baker Donelson attorneys have extensive involvement advising hospitals with regard to their relationships with medical staff physicians. The Firm provides assistance with peer review and credentialing issues, contracting with hospital-based physicians, and disputes with physician-owned hospitals and outpatient centers. We represent academic hospitals in their hospital-faculty relationships, focusing on their tax-exempt status and the

viability of their residency programs. Hospitals and health systems also turn to Baker Donelson when disputes with members of their medical staff arise and for help in ushering them through the corrective action and fair hearing processes associated with such disputes. We also represent hospitals and health systems in employment matters, including employee benefits and pension plans, labor law and employee relations, and employment agreements.

The Firm has substantial experience in providing counsel to governing boards of hospitals and health systems. Our attorneys regularly sit with the board of directors of hospitals and health systems to provide advice and counsel in real time to our clients. This advice pertains to the fiduciary responsibilities of the board members in general and, in particular, advice regarding those responsibilities in certain situations, such as oversight of pension programs. For our not-for-profit clients, we provide counsel regarding the formation and workings of compensation committees in order to avoid interim sanction exposure from the IRS, as well as advice on completing and understanding the significance of the new Form 990 filing to the IRS. We offer strategic guidance on the development of integrated delivery systems, assisting clients in structuring and negotiating joint ventures and agreements with a diverse range of third parties, including other health care providers, administrative service providers, and vendors, to foster the creation of cohesive and efficient integrated delivery systems. We have been at the forefront of physician-hospital integration and alignment efforts. Widely recognized for their health care antitrust knowledge, our antitrust attorneys provide counseling and representation to hospital and health system clients on a wide variety of organizational issues, including mergers; acquisition of physician practices; joint ventures among hospitals and between hospitals and physicians; divestitures; and formation and operation of physician-hospital organizations and other joint contracting networks. We also have extensive experience with managed care contracting issues, including exclusive and selective contracting, and tying and bundling of health care services. For non-profit hospitals involved in the purchase and resale of discount supplies and pharmaceuticals, the Firm also provides counseling on the Non-Profit Institutions Act.



Representative Matters

- Represented a non-profit hospital in establishing coverage and hospitalist professional services arrangements with various specialties, including cardiovascular surgery, cardiology, pulmonology/intensivist, neurology and telemedicine services, and structuring fair market value compensation.
- Represented an independent community hospital in acquiring numerous primary care and specialist physician practices, applying a Professional Services Agreement (PSA) model approach, resulting in provider-based physician clinic status. Structured fair market value wRVU-based compensation models, including physicians in medical oncology, cardiology, nephrology, orthopedic surgery, and gynecology.
- Represented a multistate hospital company in connection with an electronic medical records system acquisition.
- Advised a health care-related business on contract disputes.
- Represented a health care corporation in a separation from its largest shareholder and subsequent corporate reorganization.
- Represented a major hospital system in the termination of all contracts related to force majeure issues.
- Represented a specialty health care services company in selling assets to a leading provider of cardiovascular imaging services and solid-state nuclear medicine imaging products.
- Represented cardiology, medical oncology, and internal medicine practices in connection with the sale of medical practices to health care delivery systems.
- Negotiated multiprovider acquisitions.
- Served as lead and/or co-regulatory compliance counsel in corporate transactions valued at up to \$1 billion.

- Represented one of the merger partners in the successful merger of two urology medical practices located in Georgia.
- Represented an independent community hospital in negotiating a strategic affiliation agreement to join a clinically integrated network.
- Assisted a health care system in obtaining merger approvals (HSR) for several acquisitions throughout the southeastern U.S.
- Represented a for-profit company in purchasing a 140-bed acute care hospital from a local governmental instrumentality.
- Represented a non-profit hospital in the sale of a long term acute care (LTAC) hospital to a publicly traded for-profit hospital company, with a transaction value of \$7 million.
- Represented a regional non-profit health system in purchasing a 17-physician cardiovascular group.