Health Care Law
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At Phillips Lytle, we understand that health care providers face unique legal challenges. Our Health Care Law Practice Team is broad-based because our clients represent virtually every segment of today’s health care marketplace. The way health care is delivered and paid for is rapidly changing, but Phillips Lytle’s ability to provide guidance in this ever-changing area remains steady. We have more than 50 years of health care law experience, which means we know where health care has been, and we have a good sense of where it’s going.

Our clients include physicians and physician group practices, hospitals and health systems, clinics, long-term care facilities, continuing care retirement communities, home health care service providers, ambulatory care facilities, health care payors, pharmaceutical manufacturers and distributors, mental health facilities and numerous not-for-profit human services organizations, including drug and alcohol treatment providers.

ACA, Stark, HITECH, HIPAA, AKL, OMIG and MFCU aren’t just buzzwords for us – they represent real challenges that we’ve helped our clients overcome.

Our interdisciplinary practice allows for coverage of all aspects of our clients’ operations, from regulatory and compliance issues to corporate transactional and tax issues. We have the rich resources of a large firm purposefully structured to handle the recurring issues every business faces, and the particular expertise to handle the issues unique to health care providers.

Our attorneys are involved in numerous professional organizations, including the American Health Lawyers Association, Leading Age Western New York, and various health law committees of the American, New York State and Erie County Bar Associations. Our attorneys are also active with several health care foundations and serve on boards for various health-related facilities. Additionally, we teach and attend continuing education programs.

Our expertise in health care law includes:

- Health care reform obligations and opportunities
- Compliance counseling
- Health care fraud and false claims litigation
- Reimbursement
- Health care litigation
- Contract issues
- Business organization and capitalization issues
- Business operations
- HIPAA and medical record privacy
- Hospital operating issues
HEALTH CARE REFORM OBLIGATIONS AND OPPORTUNITIES

The Affordable Care Act (ACA) has had a significant impact on how the American health care system operates in the 21st century. Future anticipated legislation may turn the system on its head again. Our health care attorneys are prepared to assist our clients as new requirements take effect, while helping them take advantage of the opportunities for aligning services, reducing costs and improving care that health care payment reform provides.

COMPLIANCE COUNSELING

Medicare and Medicaid fraud and abuse laws differ significantly from those of other businesses. For example, providers are generally prohibited from giving or receiving remuneration in return for referring patients for Medicare- or Medicaid-covered services, and from purchasing or recommending the purchase of Medicare- and Medicaid-covered goods or services. These laws and the associated exemptions and safe harbor regulations have an impact on several arrangements, including joint ventures with other health care providers and physicians contracting and recruiting.

With increased cost consciousness and price competition in the health care market, providers will be increasingly entering into arrangements and undertaking activities that implicate state and federal fraud and abuse laws. We perform careful analysis on whether contemplated activities and arrangements violate these laws, and advise clients on the impact they could have on various activities, including joint ventures, health care services contracts and recruitment arrangements. We help our clients structure their arrangements and activities to comply with the law and to conduct internal investigations and audits to ensure ongoing compliance.

HEALTH CARE FRAUD AND FALSE CLAIMS LITIGATION

Our Health Care Law Team regularly assists with interpreting health care regulations, determining their effects on current or proposed activities, working out strategies for compliance, and dealing with health care regulators. We represent clients in investigations by various government entities, including the following:

- United States Department of Justice
- United States Department of Health & Human Services
- Office of Inspector General
- New York State Office of the Medicaid Inspector General
- Medicaid Fraud Control Unit in the New York State Attorney General's Office
- New York State Department of Health
- U.S. Food and Drug Administration
- Office of Professional Medical Conduct

We also assist clients with effective self-disclosures at the state and federal levels, and offer advice and training on steps to take upon receipt of a regulatory inquiry.

Our firm offers clients a unique skill set in that we have experience in representing both whistleblowers (plaintiffs) and defendants in False Claims Act litigation. From this unique perspective, we are able to provide our clients with effective counsel and sound experience.

REIMBURSEMENT

Whether Medicare, Medicaid or private insurance, numerous legal issues arise in the complex and continually evolving area of third-party reimbursement. We advise clients concerning the interpretation of various reimbursement laws, regulations and contracts. We also represent clients on appeals of intermediary and administrative decisions that impact their reimbursement, including ratemaking issues.

We offer training to hospital and nursing home staff about the basics of Medicaid and Medicare regulations. This training gives clients the ability to detect reimbursement problems quickly, before large arrears accrue. We also assist with the application process and pursuing benefits when Medicaid eligibility is contested. Administrative hearings, state and federal court proceedings, collection activities and guardianships have all been successfully employed to assist our health care clients in obtaining appropriate reimbursement.

**HEALTH CARE LITIGATION**

Complex and challenging health care issues often lead to litigation between competing providers or between providers and payors. Our Health Care Law attorneys identify key issues and provide vigorous advocacy before courts and administrative tribunals. We have represented various providers in fraud and abuse allegations, false claims, contract disputes, reimbursement challenges, and licensure and credentialing disputes.

**LITIGATION INVOLVING REGULATORS**

In addition to defending health care providers in actions brought by regulators such as the United States Department of Justice, the Medicaid Fraud Control Unit and the New York State Department of Health, we also commence litigation to vindicate our clients’ rights when such agencies take administrative actions that conflict with our clients’ interests.

**LITIGATION BY PRIVATE PARTIES AGAINST HEALTH CARE CLIENTS**

National and local plaintiffs’ attorneys are more aggressively targeting extended-care facilities and home health providers in suits alleging negligence. These cases require careful analysis and meticulous preparation to properly defend. Our clients have an advantage because we combine our extensive knowledge of health care law with our considerable litigation experience, resulting in a defense prepared for any challenge.

**LITIGATION REPRESENTING PHYSICIANS**

We assist physicians in several areas, including privilege disputes, Office of Professional Misconduct (OPMC) proceedings, practice dissolution issues and contract disputes.

**LITIGATION INVOLVING ADVANCE DIRECTIVES AND END-OF-LIFE DECISIONS**

A hospital patient who issues no advance directives and loses the capacity to make health care decisions often leaves health care providers in a legal quandary. We have represented both providers and individuals forced to make these difficult decisions. Additionally, we have assisted health care clients with issues arising from health care proxy challenges. We are experienced in handling these difficult and highly personal matters with both speed and sensitivity.

**MENTAL HYGIENE MATTERS AND GUARDIANSHIPS**

We represent mental health providers in proceedings concerning the treatment and retention of patients contrary to patients’ wishes. We also represent providers in New York State Supreme Court guardianship proceedings to ensure that the interests of patients who lack the capacity to make certain decisions are properly represented.
CONTRACTS

We assist health care providers with negotiating and preparing contracts that both meet the client’s organization or business goals and comply with the various regulatory requirements imposed by state and federal law.

BUSINESS ORGANIZATION AND CAPITALIZATION

Providers recognize that attention to controlling costs is just one component of success. Providers increasingly must gain access to additional revenue streams. We work with physician groups, hospitals, nursing homes and their investors and lenders to accomplish consolidations, mergers, acquisitions and divestitures, corporate restructurings, affiliations and financings.

RESTRUCTURING

In response to the financial dilemmas brought on by heightened cost consciousness and rapidly escalating expenses, many health care institutions have reorganized to provide a more efficient corporate structure for handling the business aspects of providing health care. Corporate restructuring and reorganization can provide the flexibility to adapt in the rapidly changing environment of the health care industry. Because of the diverse experience within our firm, we assist our clients in selecting and establishing new organizational structures and ongoing advice regarding that structure.

CAPITALIZATION

Heightened competition in capital markets and changes in the health care industry have resulted in creative debt and equity financing strategies. Phillips Lytle’s Banking & Financial Services, Real Estate, and Public Finance Teams have extensive experience in a wide variety of financing methods. We represent lenders, nursing homes, hospitals and continuing care communities in the structuring, negotiation and closing of numerous forms of financing, including tax-exempt leasing and tax-exempt bonds. We also represent clients with conventional working capital, term loan and mortgage loan facilities, and equipment-leasing transactions.

At Phillips Lytle, we have considerable experience dealing with the Dormitory Authority of the State of New York, as well as other industrial development agencies related to tax-exempt financing. We can anticipate many of the real estate, health care, corporate, tax and other issues that may arise, and we are able to assist individuals and entities in keeping projects on track. We also assist health care providers with completing tax and other due diligence questionnaires, preparing and reviewing provider descriptions in relevant offering documents, and establishing compliance procedures after the closing of transactions.

STAFFING

Labor is both the largest variable cost and the most complex management issue facing many providers. Among the most important legal issues are permissible criteria for staff appointments, denial of access due to exclusive contracts, closed shop arrangements, exclusion of non-physician professionals, revocation of physicians’ privileges, and antitrust challenges to staff exclusion decisions. Our Health Care Law Practice provides the legal advice necessary to deal with or prevent medical staff relationships issues. We represent physician groups and individual physicians in a variety of areas, including practice startups, joint ventures, professional corporations, LLPs, IPAs, purchase and sale of practices, real estate and other investments, labor and employment, employee benefits, tax planning, and other more general contract and business concerns.
NETWORKING

With increasing frequency, health care providers are joining with regional or national health care systems and networks to obtain a variety of operational benefits, such as group purchasing discounts and self-insurance funds. Legal concerns often arise with respect to the nature and form of initial affiliation and ongoing membership or other contractual concerns. We assist clients at all stages of affiliation with these systems, often in conjunction with corporate restructurings as mentioned above.

ANTITRUST

Broadly speaking, state and federal antitrust laws are designed to promote free competition and remedy the abuses associated with improper aggregation of market power. Antitrust issues generally arise when a single entity in one vertical market or geographic market employs improper methods to acquire market power, or when two or more entities combine or conspire to do so. As antitrust laws are increasingly applied to various health care provider activities, antitrust liability has become a major concern for the health care industry.

As competition in health care increases, the need for providers to review their activities with an eye on antitrust concerns also increases. Recent court cases have involved the application of antitrust laws to the areas of staff privileges, rival provider relations, third-party payors, exclusive hospital-based practice contracts, purchasing arrangements, joint ventures, mergers and acquisitions, managed care contracting and network formation. Existing and proposed activities in these areas present the potential to identify and address liability under antitrust laws. We provide our clients with careful analysis and evaluation of antitrust requirements.

TAXATION

Even though the majority of our health care provider clients are exempt from federal income tax, our tax personnel can help providers obtain initial charitable qualification and maintain such status once recognized, as well as obtain a state sales tax exemption. Additionally, we can advise providers on various tax-related issues, including private inurement, executive compensation, unrelated business income, fundraising guidelines and documentation, and the distinctions between permissible limitations on lobbying and legislative matters versus absolute prohibitions regarding participation in partisan political activities.

HIPAA AND MEDICAL RECORD PRIVACY

Even before HIPAA, New York State required that protected health information be given confidential treatment, and Phillips Lytle was providing guidance to clients regarding the disclosure of medical records. HIPAA has added numerous requirements that covered entities must meet. In addition, breach of privacy lawsuits are proliferating, sometimes resulting in press coverage more damaging than a jury verdict.

Covered entities need to know the rules concerning the release of medical information. We answer questions from providers almost daily about whether a proposed release of confidential health information is appropriate. We provide clients with comprehensive policies and procedures tailored to their unique operations, helping them to ensure that the medical information they obtain is properly protected.
EMERGENCY MEDICAL TREATMENT AND LABOR ACT (EMTALA)

We assist hospitals by ensuring compliance with the Emergency Medical Treatment and Active Labor Act of 1986, commonly known as the Patient Anti-Dumping Act. In addition to assisting our clients with EMTALA compliance, we assist with defending enforcement actions and conducting complaint investigations.

FEDERAL EMERGENCY PREPAREDNESS REQUIREMENTS

Phillips Lytle’s attorneys assist Medicare and Medicaid providers and suppliers to ensure compliance with recently promulgated national emergency preparedness requirements.

PRIVILEGING

A hospital’s duties and responsibilities with respect to granting, suspending and terminating physician privileges requires careful compliance with established procedures to ensure safe and effective delivery of care to patients and fairness to physicians. Our attorneys assist hospitals with operational issues concerning privileging standards and procedures. We also represent hospitals in administrative hearings and court proceedings concerning disputed privileging determinations.

CERTIFICATE OF NEED APPLICATIONS AND GOVERNMENT APPROVALS

The New York State Department of Health’s licensing regulations require the demonstration of community need through a Certificate of Need (CON) process as a prerequisite to establishing, constructing or renovating health care facilities, such as hospitals, nursing homes, home care agencies, and diagnostic and treatment centers. These health care facilities also must follow the CON process for acquisitions of major medical equipment. We regularly assist health care facilities with obtaining CON and other governmental approvals, including local zoning and planning board approvals in connection with major establishment, renovation, construction and acquisition projects.