

# Health Care

Barclay Damon has one of the leading health care teams in the Northeast. Our rapidly expanding bench of health care attorneys provides sophisticated counsel to businesses and professionals on regulatory, transactional, and litigation matters. We immerse ourselves in our client's business and counsel them using keen industry insight. That understanding is enhanced by attorneys on our team who have previously held positions with federal and state regulatory and enforcement bodies.

We are proud to serve as advocates and advisors to the full spectrum of the health care industry:

- Hospitals, health systems, and physicians
- Post-acute care providers
- Developmental disability and behavioral health providers
- Health Information Exchanges (HIEs) and data privacy and security

## **Regulatory and Compliance Matters**

We routinely assist clients in addressing a range of regulatory and compliance issues, including:

- Clinical alignment and network development
- Corporate compliance
- False Claims Act and anti-kickback and self-referral laws
- HIPAA and health-information privacy and security
- Licensure, Certificate of Need (CON), and surveys
- Managed-care contracting
- Medicare, Medicaid, and other payor reimbursement
- Patient care and end-of-life issues
- Professional licensure
- Telehealth

## **Corporate and Business Transactions**

We are valued business advisors to our clients. Our attorneys have the unique combination of transactional and health care experience to be able to handle sophisticated transactions.

We are routinely called upon by clients for assistance with the following:

- Antitrust
- Affiliations and network development
- Contract preparation, review, and negotiation
- Corporate governance
- Corporate tax and tax exemption
- Due-diligence regulatory reviews
- Entity formation and restructuring
- Joint-venture arrangements
- Mergers, acquisitions, and divestitures
- Project financing, planning, and implementation

## **Government and Payor Audits, Investigations, and Litigation**

Our attorneys provide strategic advice and advocacy to clients involved in government and payor audits and investigations. In the event an audit or investigation progresses to an administrative or judicial proceeding, we connect with the litigation attorneys on the firm's health care controversies team.

Our representative experience includes:

- Investigations, audits, and regulatory proceedings before the:
- HHS Office of the Inspector General (HHS OIG)
- NYS Attorney General's Bureau of Internet and Technology
- NYS Attorney General's Medicaid Fraud Control Unit (MFCU)
- NYS Department of Education (SED)
- NYS Department of Health (DOH)
- NYS Department of Health Office of Professional Medical Conduct (OPMC)
- NYS Education Department Office of the Professions (OP)
- NYS Justice Center for the Protection of People With Special Needs
- NYS Office for People With Developmental Disabilities (OPWDD)
- NYS Office of the Medicaid Inspector General (OMIG)
- NYS Office of Mental Health (OMH)
- NYS Office of Alcoholism and Substance Abuse (OASAS)
- Private Payors
- US Department of Health & Human Services' Office of Civil Rights (HHS OCR)
- US Department of Justice (DOJ)
- Article 78 proceedings challenging state-agency determinations
- Crisis response and reporting related to data-breach incidents
- Fraud and abuse allegations
- Whistleblower complaints

## Representative Experience

- Served as counsel to a direct support professional of a developmental disabilities provider that, after an investigation by the NYS Justice Center for the Protection of People With Special Needs, was the subject of a substantiated finding of Category 2 physical abuse. After the client's request for an amendment of the substantiated finding was denied, we requested a hearing before an Administrative Law Judge. Two days before the matter was to go to hearing, the Justice Center's Administrative Appeals Unit amended the finding to unsubstantiated.
- Served as counsel to a direct support professional of a developmental disabilities provider that, after an investigation by the NYS Justice Center for the Protection of People With Special Needs, was the subject of a substantiated finding of Category 1 serious physical abuse and Category 2 neglect. Filed a request for an amendment of the substantiated findings, resulting in the Category 1 claim being dropped and the Category 2 neglect being reduced to Category 3 neglect. After requesting a hearing before an administrative law judge, a few days before the matter was to go to hearing, the Justice Center's Administrative Appeals Unit amended both of the findings to unsubstantiated.
- Represented a dentist in the sale of his dental practice, associated assets, and office real property.
- Represented a senior care placement technology start-up in connection with HIPAA compliance and privacy policy and terms and conditions advising.
- Represented a hospital group in the sale of its large urology and radiation oncology medical practice and related real estate.

- Obtained a no probable cause determination for a behavioral health provider in a race and criminal conviction discrimination and retaliation case.
- Served as counsel to a NYS Office of Alcoholism and Substance Abuse Services (OASAS) chemical-dependency treatment program in a case of first impression, creating precedent from a NYS appellate court that chemical-dependency-treatment clients who participate in licensed chemical-dependency residential treatment programs are not entitled to an eviction proceeding or substantive due process prior to discharge.
- Handled a HIPAA privacy breach for a provider involving disclosures to and settlements with the US Department of Health & Human Services Office for Civil Rights (HHS-OCR) and the NYS Attorney General.
- Represented behavioral health care providers in their formation of a Medicaid health home.
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- Served as counsel in a trial in which the NYS Department of Health (DOH) and the NYS Office for People With Development Disabilities (OPWDD) were found responsible for funding the reasonable actual costs of administrative overhead in providing services under Medicaid.
- Represents an administrative data exchange in organizational planning, governance, regulatory compliance, contract negotiations, and building and implementing business-sustainability strategies.
- Represented a regional health information organization (RHIO) in developing the Statewide Health Information Network of New York (SHIN-NY), including research on cutting-edge privacy, security, and consent issues for governmental, public, and private collaborations. Continues representing the RHIO in organizational planning, governance, regulatory compliance, contract negotiations, and building and implementing business-sustainability strategies.
- Represented a consortium of numerous not-for-profit behavioral health care providers in designing and developing a behavioral health care network intended to engage in value-based contracting under a statewide Medicaid reform initiative, including assisting with corporate governance, contract negotiations, value-based payment agreements, and data privacy issues.
- Represented a consortium of numerous local governments and not-for-profit behavioral health care providers in designing and developing a behavioral health care network intended to engage in value-based contracting under a statewide Medicaid reform initiative.
- Served as general counsel to a NY-based not-for-profit assisted living provider, including licensing all four of its client residences and helping obtain ALR, enhanced, and special-needs licensure and certification. This included drafting a winning HEAL grant application, resulting in the client receiving \$3.8 million from the NYS Department of Health (DOH) to build a new assisted-living facility with enhanced capabilities.
- Provided risk-management services to MLMIC-insured hospitals, clinics, nursing homes, surgery centers, physicians, and dentists. Also provided legal guidance to facilities and professionals on a wide range of organizational and patient care issues, including HIPAA and the disclosure of medical information under NY law, EMTALA, peer review, consent for treatment, professional liability, patient discharge/abandonment questions, and the scope of practice.
- Assisted a NYS care coordination organization (CCO) with health care compliance matters during its initial formation and once operational, including assisting with vendor contracting, reviewing data-use agreements and security attestations, corporate matters, HIPAA compliance and policies, and preparing a corporate compliance plan and related policies.
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- Served as outside counsel to a residential health care facility operator in the \$7.5 million sale of a facility and related real property.
- Served as outside general counsel to a regional pharmacy, pharmaceutical products, and long-term and assisted living consulting company in a \$14 million sale of assets.

- Assisted with the restructuring of all secured and unsecured debt related to the \$25 million merger of two hospitals, including redeeming and reissuing civic facility bonds, coordinating consents from the PA and NY Departments of Health, and handling all real estate and title insurance work related to financing.
- Performed all legal responsibilities related to the \$225 million development, construction, and financing of a children's hospital, including negotiating and preparing all development, design, and construction contracts and preparing all loan and real property documentation related to HUD-insured mortgage financing and EB-5 financing.
- Prepared a HIPAA business associate manual for a Fortune 100 company's electronic medical record vendor and provided training.
- Designed corporate structures for an intellectual and developmental disabilities (IDD) agency to facilitate the telehealth delivery of health care services.
- Successfully challenged improper Medicaid rates for an intellectual/developmental disability (I/DD) agency that was acquired by a larger agency.
- Represented a client in an \$85 million transaction involving the sale of a large medical practice specializing in urology and radiation oncology to a captive medical practice controlled by a large regional hospital system together with all related real estate owned by entities affiliated with the practice. The real estate was purchased by a local developer and leased back to the captive practice pursuant to a master lease.
- Successfully defeated a \$1.6 million liability arising from an Office of Medicaid Inspector General (OMIG) finding that an intellectual/developmental disability (I/DD) agency documentation was insufficient to support reimbursement it received for services provided.
- Served as outside general counsel to a performing provider system (PPS) in the acquisition of a Rochester-area regional health home network.
- Served as outside general counsel to a WNY behavioral health provider in its merger with a regional child and adolescent behavioral health provider and in obtaining related regulatory approvals.
- Served as outside general counsel for nursing home facilities and related sellers in a \$45 million multiyear, progressive equity sale of nursing home entities and in the NYS Department of Health (DOH) regulatory approval process.
- Represented the seller of a New York City–based specialty pharmacy in the sale of its assets to a strategic buyer in a transaction valued at \$10 million.
- Represented a Central New York not-for-profit health care center in an administrative discrimination claim filed with the New York State Division of Human Rights (NYSDHR) and United States Equal Employment Opportunity Commission (EEOC) by a former employee claiming disability discrimination. The NYSDHR denied the substantive allegations and found no probable cause of discrimination. The company requested the EEOC adopt the findings of the NYSDHR and is awaiting dismissal of the federal claim.
- Represented a health care center in a claim of disability discrimination filed by a former employee with the New York State Division of Human Rights and the United States Equal Employment Opportunity Commission. The claim was dismissed, finding no discrimination had occurred.
- Represented a provider in a disability discrimination claim brought by a former patient before the New York State Division of Human Rights. The complainant claimed the provider refused to accommodate her medical condition by making her wear a face mask due to COVID-19. After the investigation, the New York State Division of Human Rights found no probable cause to believe the patient's rights were violated.
- Successfully reduced the number of serious OSHA citations received by an urgent care provider for violating the Healthcare Emergency Temporary Standard from 19 to three, and reduced the client's fine by 60 percent.
- Successfully represented several NYS fiscal intermediaries before OPWDD, resulting in the cessation of withholding 20 percent of non-Medicaid local assistance payments.

- Successfully obtained injunctive relief during the COVID-19 shutdown on behalf of an OPWDD provider enjoining the determination of DOH and OPWDD not to recalculate the provider's recently issued group day habilitation Medicaid reimbursement rate. The matter was ultimately remanded for a recalculation of the rate.
- Represented a health care provider in an audit of patient records by an insurance company that alleged approximately \$400,000 in overpayments. The insurance company rescinded its determination regarding the overpayment, and the client was not required to repay any of the alleged overpayments.
- Former employee asserted claims of discrimination based on race and color, family status, sex, and disability. Former employee also claims retaliation for having opposed illegal discrimination in the workplace. After investigation by the New York State Division of Human Rights (including submission of Position Statement, documents, and interviews), the New York State Division of Human Rights found No Probable Cause to believe that discrimination or retaliation occurred.
- Litigated multiple PTO and wage claims and settled the case.