Health Care Controversies

Our Health Care Controversies Team provides clients with access to a team of experienced attorneys with the skills necessary to resolve complex disputes that arise in the health care and pharmacy industries.

Health care controversies represent the crossroads between adversarial proceedings, including litigation and administrative proceedings, and the highly regulated health care industry. A health care controversy can include major litigation involving health care providers, credentialing proceedings before licensing bodies, or disciplinary proceedings before the many state agencies with jurisdiction over providers. They include administrative and arbitration hearings and, if necessary, state or federal court appearances.

Regulators' increasing focus on the use of recovery-driven adversarial proceedings to enforce developing standards of compliance and fraud waste and abuse detection makes this a growing area of concern for clients in the health care industry. Now more than ever, health providers are likely to find themselves affected by investigations or enforcement proceedings that carry the risk of substantial, and even exponential, civil or criminal liability.

Our clients in the pharmacy industry face ever more complicated investigations, audits, and enforcement actions, including those by the Office of Inspector General (OIG), the Drug Enforcement Administration (DEA), and other regulatory bodies. While helping clients avoid risk is always our goal, we also represent them in dispute resolution and aggressively in litigation when needed.

Our team of attorneys has years of experience representing clients in government investigations and regulatory proceedings, including Medicare and Medicaid, and in the litigated or adversarial proceedings they can spawn. They have the required aggressive litigation skills and thorough knowledge of substantive health care laws and laws affecting the pharmacy industry.

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.
- Conducted a sexual harassment investigation involving claims against a CEO.
- Successfully obtained a reversal of the termination of five pharmacy locations.
- Successfully appealed a PBM's audit findings related to "advisory" prescriptions on behalf of a NY pharmacy.
- Successfully obtained an injunction to delay the termination of a pharmacy contract after the client was terminated from the network for fraud.

- Successfully secured a preliminary injunction barring the NYS Department of Health from implementing dramatic cuts in Medicaid reimbursement for incontinence supplies. Through an Article 78 proceeding, plaintiffs alleged the severity of the cuts would eliminate local home-delivery-service networks, leaving a de facto mail-order system in its place. The Kings County Supreme Court issued a preliminary injunction in the plaintiffs' favor, barring the NYS Department of Health (DOH) from implementing the reduced rates through the pendency of the litigation, representing a big win for the DME and pharmacy provider communities.
- Served as counsel to a home health care agency and provided representation in multiple audits by the Office of Medicaid Inspector General (OMIG), resulting in significant reductions in overpayment amounts. Also negotiated settlement agreements with OMIG, resulting in agreements for even lower overpayment amounts.
- Representing a physician in a landmark lawsuit against insurers for failing to protect the physician's confidential information from fraud and abuse by third parties.
- Successfully advocated for a physician's enrollment in Medicaid following a wrongful exclusion and successfully negotiated the physician's return into numerous health care provider networks.
- Brought an Article 78 proceeding against the Office of Mental Health to eliminate COPS payment recoupments and negotiated a settlement where the client paid less than what was demanded.
- Represented a state employee in federal civil-rights actions involving constitutional due-process issues and allegations of the denial of the First Amendment, due process, and Equal Protection rights, including allegations of rights violations by individuals under the auspice of the NYS Office of People With Developmental Disabilities (OPWDD) following investigations by the NYS Justice Center and the Department of Health (DOH).
- Represented multiple health care industry employers who were former members of health care group self-insurance workers' compensation trusts, defending multimillion-dollar claims brought by the NYS Workers Compensation Board and helping to recover substantial proceeds in multiparty lawsuits against the third parties responsible for the $188 million trust deficit.
- 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.
- 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.
- A former employee of a Central New York hospital system filed a charge of discrimination with the United States Equal Employment Opportunity Commission claiming sex and disability discrimination. After the investigation, the EEOC dismissed the charge of discrimination.
- Successfully obtained dismissal on summary judgment of a claim for a $2 million "finder's fee" arising from the sale of a pharmacy business.
- 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.