



One Firm Worldwide<sup>SM</sup>



## HEALTH CARE PRACTICE

The Jones Day Health Care Practice is an interdisciplinary-practice team, designed to facilitate the exchange of information and targeted knowledge about the health care industry and the ever-changing health care regulations, to better meet our clients' needs. We serve a wide variety of health care clients, including multihospital health systems, academic medical centers, hospitals, physicians and physician groups, health care insurers, managed care organizations, pharmaceutical companies, skilled nursing, assisted living and residential care companies, and e-health businesses. Lawyers in Jones Day's Health Care Practice are experienced in the specialty areas that are of particular interest to the health care industry, including mergers, acquisitions, joint ventures, finance, anti-trust, compliance counseling and defense, e-health

business, restructuring and reorganization, tax, tax-exempt organizations, managed care, Medicare reimbursement, labor and employment issues, and employee benefits and executive compensation.

## BUSINESS TRANSACTIONS

Jones Day's health care lawyers are regularly involved in joint ventures, acquisitions, mergers, and divestitures on behalf of both for-profit and not-for-profit clients. These engagements have included representation of hospitals and acute care facilities, nursing homes, ancillary service providers, physician groups, health plans, and group purchasing entities. We also assist health care clients in designing and implementing complex business transactions. Jones Day

has been actively involved in counseling HMOs, hospitals, and hospital systems throughout the country with respect to mergers and acquisitions and other, more unusual, affiliation strategies. We have taken the lead on behalf of our clients in creating innovative arrangements that meet the requirements of all the parties to the transactions.

Jones Day lawyers frequently advise clients on the creation of new business ventures to address market opportunities. This experience has included the formation of integrated delivery systems and PSOs, the formation of for-profit and taxable nonprofit MSOs, ancillary services companies and ambulatory surgery centers for nonprofit clients, the creation of novel joint venture structures for provider clients to furnish tertiary and quaternary services on a collaborative basis, formats for provider-payor integration and alliances, and the restructuring of a staff model HMO into an independent physician practice management company.

## FINANCE

Health care financings often involve complex issues of not-for-profit, tax, and securities law. The members of the Jones Day health care finance team have, in each of the past 10 years, ranked among the top three providers of bond counsel services in the country, based on both number of tax-exempt health care bond issues and dollar volume of such bond issues. In addition, members of the group regularly serve as counsel to health care investment bankers, health care institutions and systems, and financial institutions providing credit and liquidity support to health care institutions. Over the past several years, members of the team have worked with health care institutions in 35 states and Puerto Rico, more than 35 multihospital systems, and all major Wall Street and many regional investment banking firms active in health care finance.

The Jones Day health care finance team is one of the largest groups in the country dedicated exclusively to health care finance. Members of the group are supported by an additional 50 Jones Day lawyers who service health care clients, including authorities in health care mergers and acquisitions, antitrust, labor, and government regulation.

## ANTITRUST

Jones Day has one of the largest antitrust practices in the world. Today, nearly 50 of our lawyers practice exclusively or primarily in the antitrust area, and several times that number have significant antitrust experience. Many of our antitrust partners are alumni of the federal antitrust agencies. In addition, many of our antitrust lawyers have significant litigation experience. Because our Antitrust Practice is so large, many of Jones Day's most skilled general litigators have done a considerable amount of antitrust litigation (both civil and criminal).

Jones Day's antitrust attorneys possess a nationally recognized level of experience in health care antitrust. Virtually every U.S. lawyer in Jones Day's Antitrust Practice has worked on a number of health care matters. We have provided antitrust advice to almost every sector of the health care industry. Many of the clients who have sought our antitrust advice are multihospital systems with facilities and programs throughout a number of geographic areas. In addition, we have provided antitrust counseling and defense to physician groups, health plans, and other managed care companies, as well as to medical supply distributors and equipment manufacturers, both on a statewide and a national basis. Jones Day antitrust lawyers have had considerable experience in virtually every area in which health care firms need antitrust advice. These areas include mergers, acquisitions, and other affiliations, including Hart-Scott-Rodino filings and second requests; joint ventures; managed care networks; state and federal government investigations; and government and private litigation.

## COMPLIANCE COUNSELING AND DEFENSE

A significant part of Jones Day's health care regulatory practice involves counseling and representing health care organizations and their officers and directors in responding to government enforcement measures. Clients include managed care providers; hospitals, health systems, and their affiliated entities; long-term care facilities; physician organizations; MSOs, PPOs, and HMOs; provider affiliations; and manufacturers and suppliers. State and federal "fraud and abuse" statutes, physician self-referral laws, and False Claims Act enforcement initiatives are the basis of this practice. The

Firm also represents health care institutions facing investigations and litigation related to enforcement initiatives undertaken by federal and state agencies, including False Claims Act and *qui tam* cases. Jones Day routinely handles investigations by the Department of Justice, the Department of Health and Human Services, the Office of Inspector General, the FBI, and state attorneys general. The Firm is presently engaged in defending more than 200 active cases and investigations across the country. Jones Day health care attorneys have defended investigations by the government in connection with alleged violations of the anti-kickback and Stark laws, Operation Bad Bundle, P.A.T.H. initiatives, the Bacterial Pneumonia Upcoding Project, cost report practices, regulatory matters involving long-term care facilities, and other issues.

Jones Day also develops and implements corporate compliance plans for hospitals/health systems, managed care organizations, and laboratories and other health-related entities. As part of compliance plan development, we are often asked to assess and report on the efficacy of existing internal compliance controls and assist in the design and implementation of the plan.

Jones Day also has served as special regulatory counsel for publicly traded health care organizations and private not-for-profit health care systems under federal investigation for alleged fraud and abuse and billing improprieties. We also have been called upon by investment bankers to advise on fraud and abuse issues that arise in the course of major acquisitions, including issues uncovered as part of the due diligence process.

## **E-HEALTH AND HEALTH CARE TECHNOLOGY PRACTICE**

Today's health care organizations face a variety of complex technology-related issues. While the internet has the potential to enhance health care delivery, it also creates new challenges in the forms of increased competition and burdensome governmental regulation. For integrated delivery systems to be successful, seamless information systems must be created that can integrate and share information



With more than 75 lawyers,

Jones Day's Health Care

Practice is one of the country's largest unified health care law practice teams. We serve a variety of health care clients and have extensive experience in all traditional and health-care-related businesses.



By bringing our substantial legal experience and knowledge of the health care and information technology industries to bear on our clients' needs, we can provide them with effective advice in approaching the complex matters facing the health care industry today.

among all system participants, including physicians, hospitals, pharmacies, payors, and patients. The emergence of such systems, while holding much promise for improving the quality of health care, raises concerns regarding medical licensure, reimbursement, and risk management. The use of the internet as the information exchange platform reduces the capital costs needed to develop such systems but introduces new challenges that must be addressed by health care organizations: privacy and security of patient health information, intellectual property rights concerns, and myriad new internet-related agreements.

Compliance with HIPAA rules will be a challenge to the health care industry for years to come. Jones Day has responded to this challenge by forming a multidisciplinary HIPAA Task Force to assist our clients in organizing and implementing their HIPAA compliance efforts.

The Firm's health care lawyers have a broad base of experience assisting health care industry clients in all aspects of their information systems needs, from turnkey hardware and software systems acquisitions and development contracts to network agreements, outsourcing, and shared services agreements. The Firm's health care lawyers also have substantial experience in negotiating software license, development, support, and maintenance agreements, from both the licensor and licensee sides, and in negotiating web site agreements, ASP contracts, and outsourcing arrangements.

Jones Day's e-Health and Health Care Technology practice advises health care clients on the legal aspects of these matters. Because of the importance of information systems and other technology to the fulfillment of their missions, health care organizations must protect their investment in these assets with the assistance of sound legal counsel.

Our combination of legal experience and knowledge of the health care, e-commerce, and information technology industries makes Jones Day well qualified to recognize health care clients' needs and provide those clients with effective advice in approaching the complex matters that face today's health care industry.

## **BUSINESS RESTRUCTURING & REORGANIZATION**

Jones Day's Business Restructuring & Reorganization Practice consistently is ranked as one of the premier groups of restructuring, reorganization, insolvency, and workout practitioners in the United States. Jones Day's restructuring and reorganization lawyers, working with the Firm's lawyers in other practice areas, bring to bear the broadest possible range of experience in addressing the needs of clients in protecting their rights in bankruptcy and out-of-court restructurings and maximizing credit recoveries. In particular, Jones Day's restructuring and reorganization lawyers work regularly with the Firm's health care lawyers to represent health care clients in a wide variety of insolvency and restructuring matters. Through this teaming approach, Jones Day has developed extensive knowledge in the complex interplay of regulatory, insolvency, and transactional issues that arise in health care bankruptcy and restructuring matters.

## **TAX AND TAX-EXEMPT ORGANIZATIONS**

Jones Day's Tax Practice includes approximately 100 lawyers with experience that collectively covers nearly all aspects of federal and state taxation across the United States. Major areas of experience include audits and litigation, corporate transactions, state and local taxes, financial products, tax-exempt financing, restructuring and reorganization, real estate, federal legislative and administrative practice, executive compensation and, of course, health care and tax-exempt organizations. In the area of tax-exempt health care organizations, our tax experience complements our general corporate experience. Our health care tax lawyers have extensive experience in structuring corporate mergers, acquisitions, reorganizations, joint ventures, joint operating agreements, integrated delivery systems, HMOs, PPOs, PHOs, and other arrangements. We aim to provide constructive tax-advantaged solutions to achieving business objectives that comply with rules applicable to tax-exempt organizations. We also have substantial experience in performing audits on behalf of clients to assess current compliance with applicable laws and regulations, to structure programs to ensure continued tax exemption, and to deal with various tax issues such as unrelated business tax, employee classification, intermediate sanctions, relationships with physicians, and intercompany transactions.

## **OUTSOURCING**

The pace of business today puts increased pressure on health care organizations to deliver against ever-changing requirements. Forward-thinking companies can meet competitive challenges and reach beyond their core competencies by forming alliances with trusted partners to secure technology, infrastructure, and experience. The strategic use of efficient third-party providers to perform essential functions traditionally handled internally — a practice known as “outsourcing” — can help transform a company into a more dynamic, market-leading organization. By developing solid relationships with their partners, health care companies of all sizes are able to focus on developing the capabilities that are genuinely important to their business.

### **IT OUTSOURCING**

Outsourcing information technology functions to third-party providers gives a company access to state-of-the-art technology and frees it to devote resources to its own core business. Recent deals developed by Jones Day include structuring and negotiating agreements for the outsourcing of multijurisdictional, multifacility, full-scope IT functions, including computing functions, application development and maintenance, desktop support, and telecommunications, as well as application service provider (ASP), WAN, web hosting, internet, extranet, database management, help desk, and voice and data network management agreements.

### **BUSINESS PROCESS OUTSOURCING**

Outsourcing critical business processes to third-party vendors calls into play many of the same issues as outsourcing IT functions, but it raises some special considerations as well. In a BPO transaction, much more attention must be paid to the need for the vendor to fit well with the client's operations and processes and to be attuned to the client's culture. Jones Day's recent BPO work includes the outsourcing of clinical departments, e-billing, collections support and services, human resources, benefit plan administration, procurement, finance and accounting, facilities management, energy, and customer service functions.

Any company considering an outsourcing relationship needs the assistance of counsel with a firm understanding of the relevant legal issues, knowledge of the health care industry,

and a familiarity with the technological operations available. At Jones Day, we have a long history of guiding our clients through the complex outsourcing process, providing critical advice at every step along the way.

## PAYMENTS AND PAYORS

Whether advising clients on routine billing issues or complex corporate transactions, Jones Day attorneys routinely advise clients of the Medicare reimbursement implications and payment rules applicable to a wide variety of corporate transactions and operations, with particular emphasis on change of ownership, successor liability, coverage, general Medicare billing and documentation, cost reporting, and certification issues. Our experience has included advising a broad array of entities and service providers, including general and specialty hospitals, medical group practices, Medicare-risk contractors, managed care companies, laboratories (clinical and diagnostic), home health agencies, hospices, ambulatory surgery centers, durable medical equipment suppliers, drug companies, and equipment suppliers. Matters that we handle on a routine basis include discrete billing issues, general reassignments, "incident to" billing, conditions of participation, and coverage for new devices and services. Under special circumstances, Jones Day has worked with clients in the review of cost reports and settlement strategies and has handled clients' appeals before the Provider Reimbursement Review Board.

The nature and complexity of our corporate health care representations require us to work closely with CMS central and regional offices, fiscal intermediaries, carriers, and DMERCs, as well as the individual state agencies where our clients are located. As part of our regulatory counseling, we have helped position our clients on the cutting edge of policy issues in the development of new services, unique arrangements, and delivery modes.

Jones Day attorneys also advise clients regarding the impact of recent changes in reimbursement policies involving hospitals, skilled nursing facilities, and home health and managed care organizations as they are implemented by CMS, particularly with regard to changes mandated to the Health Insurance Portability and Accountability Act of 1996 and the

Balanced Budget Act of 1997. Jones Day attorneys have been directly involved in the development of the regulations for Medicare+Choice plans through the negotiated rulemaking process that resulted in the development of solvency standards for provider-sponsored organizations.

## LABOR AND EMPLOYMENT ISSUES

Jones Day has one of the largest health care labor and employment law practices in the United States. We represent major health care providers in all areas of the country. Jones Day attorneys regularly appear in state and federal courts with respect to labor and employment-related litigation. An active practice for the Firm's health care labor lawyers also involves advising and representing employers with respect to labor-organizing campaigns, including "corporate campaigns." Such representations include appearances for clients both before the NLRB and in the federal courts. An integral part of Jones Day's Labor & Employment Practice, however, is assisting our clients in avoiding administrative and civil litigation, as well as providing appropriate counseling and preventive advice in all areas of human-resources-related legal matters. Our experience includes counseling and representation in all areas of labor and employment (management representation exclusively), including:

- ADA counseling and litigation.
- Acquisition and divestiture counseling.
- Administrative proceedings, including those before the National Labor Relations Board, the Occupational Safety and Health Review Commission, the EEOC, state fair-employment agencies, and the OFCCP (Office of Federal Contract Compliance Programs).
- Appeals of labor and employment cases.
- Collective bargaining and labor arbitration.
- Corporate restructurings.
- Counseling, training, and representation with respect to varied human resources issues arising in the health care workplace.
- Discrimination in the workplace — counseling and litigation in all courts, including class actions.
- Drafting employee policies and procedures, including solicitation, distribution and access policies, job descriptions, and employee handbooks.

- Employment contracts and restrictive covenant issues.
- ERISA and employee benefits litigation.
- FMLA counseling and litigation.
- Human resources counseling.
- Labor relations counseling, union representation issues, and unfair labor practice proceedings.
- OSHA advice.
- Reorganizations, reductions in force, and facility closings, including WARN Act issues.
- Strike-related advice and litigation.
- Substance abuse issues and testing.
- Wage and hour claims.
- Wrongful discharge matters.

## EMPLOYEE BENEFITS & EXECUTIVE COMPENSATION

The Employee Benefits & Executive Compensation Practice at Jones Day includes approximately 45 lawyers located in Atlanta, Chicago, Cleveland, Columbus, Dallas, London, Los Angeles, New York, San Francisco, and Washington. We represent a variety of employee benefit plans and sponsoring entities and handle all aspects of employee benefits, including plan design and drafting, advice with respect to taxation and deductibility of benefits, qualification requirements under the Internal Revenue Code, fiduciary responsibility requirements under the Employee Retirement Income Security Act, and plan administrative matters. As part of our focus on health care clients, we have developed a team of employee benefits lawyers who devote their practices to the unique employee benefits issues associated with health care clients. These issues include employee benefit plans for tax-exempt entities, controlled group issues, affiliated service group issues, plan design and testing issues for entities with multiple plans, merger and acquisition issues in business combinations of hospitals and physician practices, and flexible compensation strategies. We also have significant experience in designing and implementing executive compensation programs for executives at both for-profit and not-for-profit entities.

## REPRESENTATIVE CLIENTS

- Ascension Health; St. Louis, Missouri
- Banner Health System; Phoenix, Arizona
- Baptist Health System; Birmingham, Alabama
- Bon Secours Health System, Inc.; Marriottsville, Maryland
- Capital Blue Cross; Harrisburg, Pennsylvania
- Cardinal Health, Inc.; Dublin, Ohio
- Caremark Rx, Inc.; Nashville, Tennessee
- Cedars-Sinai Medical Center, Los Angeles, California
- CIGNA Corporation; Philadelphia, Pennsylvania
- Illinois Health Finance Authority; Chicago, Illinois
- Loma Linda University Adventist Health Sciences Center; Loma Linda, California
- Merrill Lynch & Co.; New York, New York
- Premier Health Partners; Dayton, Ohio
- ProMedica Health System; Toledo, Ohio
- Sisters of Charity of Leavenworth Health System; Lenexa, Kansas
- Sutter Health; Sacramento, California
- Tenet Healthcare Corporation; Dallas, Texas
- The Cleveland Clinic; Cleveland, Ohio
- The Ohio State University Medical Center; Columbus, Ohio
- University Hospitals Health System; Cleveland, Ohio
- University of Pittsburgh Medical Center; Pittsburgh, Pennsylvania

## ADDITIONAL INFORMATION

For additional information regarding our Health Care Practice, please contact your principal Firm representative or one of the lawyers listed in this publication. General email messages may be sent to [healthcare@jonesday.com](mailto:healthcare@jonesday.com). We invite you to visit our web site at [www.jonesday.com](http://www.jonesday.com).

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