

# Health Care Contracting

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Our lawyers have extensive experience representing contractors that support federal and state health care programs, including Medicare, Medicaid, TRICARE, and the Federal Employees Health Benefits Program. We also regularly counsel clients implementing programs under the Affordable Care Act (ACA), including Health Insurance Exchanges.

In conjunction with our colleagues in our Health Care Practice, we handle a full spectrum of matters relating to the procurement and provision of health care services under federal and state government contracts, including the analysis of government solicitations; the negotiation and drafting of contract terms with government agencies, subcontractors, network providers, and pharmacy benefit managers; the protest and defense of contract awards; counseling on contract administration issues and the prosecution of claims; and advising clients on matters of regulatory compliance (addressing issues of organizational conflicts of interest (OCIs), compliance with the Cost Accounting Standards (CAS) and FAR cost principles, mandatory and voluntary self-disclosures, kickback allegations, data rights and uses, and subcontractor overpayments). We also represent health care companies in federal agency audits and related litigation, government investigations, and False Claims Act (FCA) litigation.

A growing segment of our practice is now devoted to advising clients on the application of health care reform legislation to their businesses and customers. We also are involved extensively in privacy and security matters for our clients, focusing on the continuing challenges associated with the Health Insurance Portability and Accountability Act (HIPAA) Administrative Simplification regulations and challenges under the Health Information Technology for Economic and Clinical Health Act (the HITECH Act), as incorporated in the American Recovery and Reinvestment Act of 2009.

Representative experience includes:

- Representing successful and unsuccessful bidders in Medicare Administrative Contractor (MAC), Recovery Audit Contractor (RAC), and other Medicare contract protests before the U.S. Government Accountability Office (GAO) and the Court of Federal Claims (COFC).
  - Successfully defended protests brought by two disappointed offerors challenging CMS's award to Noridian Healthcare Solutions of a MAC contract valued at almost \$400 million before the GAO and the follow-on protest filed at the COFC. See Decision, *GAO-Palmetto GBA, LLC*, B-407668, Jan. 18, 2013, 2013 CPD ¶ 53, and COFC Decision *CGS Administrators, LLC v. United States*, 110 Fed. Cl. 431 (2013).

- Successfully defended protest challenging CMS's award to Novitas Solutions, Inc. of a MAC contract valued at over \$400 million. See Decision–*TrailBlazer Health Centers, LLC*, B-407486.2, Apr. 16, 2013, 2013 CPD ¶ 103.
- Successfully defended protest of RAC Contract award potentially worth hundreds of millions of dollars against allegations that the awardee (our client) had a significant impaired objectivity OCI See Decision–*Diversified Collection Services, Inc.*, B-406958, Jan. 8, 2013, 2013 CPD ¶ 23.
- Counseling a TRICARE contractor on legal issues related to the TRICARE T3 Managed Care Support request for proposal and representing same contractor in protests before both the GAO and the COFC.
- Advising clients with respect to Medicaid Management Information Systems (MMIS) contract under state procurement laws.
- Advising clients on OCI issues generally and, more recently, on the OCI implications of potential health care reform initiatives and innovations.
- Advising clients and providing contractor training on the intricacies of the FAR cost accounting principles and the CAS, including all aspects of cost allowability and allocability, CAS Disclosure Statements, changes in disclosed accounting practices, and incurred cost submissions.
- Advising clients on intellectual property matters, including the disparate intellectual property provisions found in FAR-based and state contracts.
- Negotiating subcontracts for MACs, TRICARE, and Medicaid contractors and Medicare Advantage plans.
- Negotiating multi-billion-dollar pharmacy benefit management contracts on behalf of Federal Employees Health Benefits (FEHB) and Medicare Advantage plans.
- Successfully defending TRICARE and Medicare contractors in FCA litigation.
- Drafting contingency plan administrative services subcontracts.