





Kathryn Bucher

Partner



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Kathryn's practice is at the intersection of three industry groups: health care payors, property and casualty (P&C) insurers, and government contractors. For three decades she has represented health care insurers and affiliates in their work with federal health care programs (including Medicare, Medicaid, the Federal Employees Health Benefits Program, Veterans Health Administration, and TRICARE). From government contractors of administrative services to managed care organizations with underwriting risks, all navigate complex regulations and government oversight. Kathryn has devoted a significant part of her practice to representing Medicare Administrative Contractors (MACs) in procurement, regulatory compliance, and litigation matters, including both defending False Claims *qui tam* suits and teaming with the U.S. Department of Justice in its prosecution of Medicare fraud by providers and suppliers. This unique practice mix has positioned her as a recognized thought leader on Medicare Secondary Payer (MSP) issues for P&C insurers, specifically their "Section 111" reporting and related reimbursement obligations to the Medicare Program.

Kathryn is leader and founder of the firm's specialty Section 111 Insurer Reporting and MSP Reimbursement practice begun in 2009. Read more here.

Representative Matters

- **For health care and P&C insurers:**
 - Counsels on health care policy, legislation, and regulatory initiatives.

Practice Areas

Health Care
Section 111 Insurer Reporting and MSP Reimbursement
Insurance
Government Contracts
Issues and Appeals
Litigation

Credentials

Education

J.D., Cornell Law School
B.A., *cum laude*, University of Vermont

Law Journals

Senior Editor, *Cornell International Law Journal*

Bar and Court Memberships

District of Columbia Bar
Supreme Court of the United States
U.S. Court of Appeals for the Ninth Circuit
U.S. Court of Federal Claims
U.S. District Courts for the District of Columbia and District of Maryland

- Advises on the application of federal health care law to the businesses of P&C insurers and specialty lines.
- Advises, publishes, and posts on a wide range of Medicare secondary payer (MSP) issues:
 - Mandatory reporting obligations of P&C insurers under Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA);
 - Identifying the correct reporting entity and reportable amount when settling mass and class actions;
 - Section 111 penalties;
 - Obligations of “Group Health Plans” and “Non-Group Health Plans” (also known as “NGHPs” or liability, no-fault, and workers’ compensation carriers) to reimburse Medicare for “conditional payments”;
 - The fiction of the NGHP obligation to pay future medicals;
 - Voluntary Medicare set-aside (MSA) arrangements and other structured settlements;
 - MSP claims audits;
 - Internal compliance reviews and related voluntary Section 111 self-disclosures and remediation plans;
 - Mistaken MSP payments of Group Health Plans;
 - MSP statute of limitations; and
 - Classification of professional liability and accident & health insurance under Section 111.
- **Often-cited Section 111 articles – analysis that has stood the test of time:**
 - “Setting the Record Straight: Dispelling Medicare Myths in Tort Settlements,” *DRI's for the Defense* (May 2013);
 - “Broad Application of Medicare’s Mandatory Insurer Reporting Requirements to Non-U.S. Property & Casualty Carriers Flouts Supreme Court Limitations on Extraterritorial Reach of U.S. Law,” *Insurance Coverage Law Report* (July 2014); and
 - Wiley's Section 111 Bulletins (2009 to present).
- Defends health care payors and P&C insurers in federal administrative proceedings and related appeals challenging MSP reimbursement demands.
- Defends insurers in MSP False Claims litigation.
- Audits MSP compliance programs for P&C insurers and works hand-in-hand with their Medicare compliance vendors.
- Negotiates pharmacy benefit management (PBM) contracts and counsels on related pharmacy benefit issues – read more here.
- **For health care government contractors:**

- Counsels on health care policy, legislation, and regulatory matters, including those arising under the Affordable Care Act.
- As lead counsel, routinely defends cases brought by Medicare providers and suppliers against Medicare contractors in federal court; all have ended in dismissal.
- Defends government contractors in investigations, suits, and third-party actions under the False Claims Act, having achieved government declination or resolution prior to intervention in more than a dozen cases.
- Represents Medicare Administrative Contractors in their litigation support and witness roles in DOJ fraud investigations and prosecutions of Medicare providers and suppliers.
- Litigates bid protests before the U.S. Government Accountability Office (GAO) and the Court of Federal Claims, including successful defense of the first MAC award in DME Jurisdiction D in 2006 and subsequent cycle awards.
- Successfully arbitrated a state health insurance exchange/IT dispute between prime contractor and sub resulting in a \$11 million award, defeating related claims in federal district court and resolving an umbrella state/prime contract performance dispute.
- Advises on cybersecurity, data rights, and privacy issues.
- Counsels on compliance with the Anti-Kickback laws and the Federal Acquisition Regulation (FAR) Mandatory Disclosure Rule.
- Defends cost audits before federal agencies and litigates final audit decisions before Boards of Contract Appeals.
- Prepares contracts, subcontracts, affiliate agreements, contractor certifications, and administrative claims.
- Advises Medicare contractors on contractor performance issues, suspension and debarment matters, and contractor reporting obligations.
- Assesses cost allowability and allocability issues under the FAR.
- Leads internal investigations for compliance officers and general counsel.
- Advises on corporate compliance and records management programs.
- Conducts health care due diligence for mergers and acquisitions.

Affiliations

- American Bar Association (ABA)
 - Vice-Chair (2004-2005) and Member, Accounting, Cost & Pricing Committee, Section of Public Contract Law
 - Procurement Fraud and Health Care Contracting Committees, Section of Public Contract Law

- Section of Health Law
- American Health Lawyers Association (AHLA)
- America's Health Insurance Plans (AHIP)
- Current Member and Past Chair, Board of Trustees, The Barker Adoption Foundation

Recognitions

- Received 2013 Burton Award for Distinguished Legal Writing for "Supreme Court Affirms Opportunities and Uncertainties for Health Care Contractors"
- Received 2016 Richard B. Barker Award for leadership and service contributions to The Barker Adoption Foundation
- Wiley Pro Bono Champion (2014, 2016, 2017, 2019, and 2021)
- Past Member, Firm Management Committee and Vice-Chair, Pro Bono Committee