

## Health Care

### We Are a Full-Service Practice Group

The Sills Cummis & Gross Health Care Practice Group is a multi-disciplinary team of attorneys that provides the full range of legal services for our health care clients. Our clients include health systems, hospitals, nursing homes, long-term care facilities, ambulatory surgery centers, home health companies, investment funds specializing in health care, imaging centers, medical groups, ambulance companies, specialty care networks, management companies and other health care businesses.

The Group's attorneys focus on many aspects of health care law, including:

- Health Care Transactions and Corporate Law
- Health Care Regulatory and Compliance
- Health Care Government and Internal Investigations
- Health Care Finance
- Health Care Employment and Labor Law
- Health Care Litigation
- Health Care Real Estate
- Health Care Antitrust

### Recent Strategic Health Care Engagements

We are often asked what types of major strategic matters we have recently focused on for our health care clients. We are on the cutting edge of substantial changes affecting the health care industry, and recently have been most actively involved in advising clients in the following three major areas:

1. Major Transactions, Strategic Alignments and ACOs
  - a. Consolidations, Mergers, Acquisitions and Affiliations
  - b. Hospital-Physician Alignment Strategies and Transactions
  - c. Health Reform Driven Strategies (ACOs, etc.)
2. Defense of Federal and State Government Investigations
3. Major Financings and Restructurings

### Transactions, Mergers, Acquisitions, Strategic Alignments

Since the passage of the federal Health Care Reform Law, hospitals and other health facilities and businesses are facing multiple challenges. The reform law has effectuated drastic changes in the way health care will be provided and paid for by the Medicare program, the largest "payor" for health care services. Thus, health care facilities and businesses are in the process of changing their

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current and long-range business plans to strategically position themselves in order to succeed under the Health Care Reform Law. This has included a new wave of strategic mergers, acquisitions, consolidations and affiliations.

The M&A transactions the Sills Cummis & Gross Health Care Practice Group has recently worked on (or is currently working on) involve a vast array of health industry companies such as:

- Hospitals and Health Systems
- Long-Term Care Companies (SNFs, Assisted Living, Hospice and Adult Day Care)
- Home Health Companies
- Outpatient Facilities and Services
  - Ambulatory Surgery Centers
  - Imaging Centers
  - Urgent Care Centers
  - Dialysis Facilities
  - CyberKnife and Radiation Therapy Centers
  - Ambulance Companies
- Disease Management and Specialty Managed Care Companies
- Health Care Financial and Administrative Services Companies
- Pharmaceutical, Medical Device and Biotech Companies

The Health Care Reform Law contemplates significant changes to the way Medicare will pay for health care services through mechanisms such as bundled payments and value-based purchasing, and the way patient care will be delivered through accountable care organizations (“ACOs”) and medical homes. This has driven providers to develop new strategic plans to achieve the synergies necessary to succeed under the reform initiatives, which focus on:

- Physician alignment and integration strategies,
- Strategic transactions (e.g., co-management arrangements, joint ventures, etc.) with physicians and/or national specialty care companies,
- ACO development and contracts (both Medicare and commercial) and other reform-driven service models (bundling, medical home, etc.), and
- Population management contracts, care management arrangements and clinically integrated networks.

## **Defense of Federal and State Government Investigations**

Hospitals, long-term care facilities, home health providers and other health care businesses recently have faced stepped-up enforcement by federal and state governmental authorities. The Health Care Reform Law increases government funding for these types of enforcement activities and makes other changes to fraud and abuse laws which, in the aggregate, will significantly increase health care enforcement activities going forward.

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The Health Care Practice Group has seen an increase in requests from health care industry clients for assistance in enhancing their compliance efforts, and our attorneys who focus on health care government investigations have been busier than ever defending health care clients in federal and state governmental investigations, settlements and audits.

In this regard, we are currently representing several health care facilities and companies in defending (and settling) various government investigations (subpoenas, CIDs, audits and other inquiries) relating to Medicare and Medicaid billing/coding issues, kickback issues and related federal program compliance issues. For years, we have been conducting numerous internal investigations of sophisticated billing and reimbursement issues, as well as reviews of their arrangements with physicians to ensure compliance with the federal Stark and Anti-Kickback laws, including advising with respect to remedial measures (corrected bills, self-disclosures, etc.).

## **Financings and Restructurings in the Health Care Industry**

Health care facilities and businesses in the region continue to face financial challenges such as diminished charity care funding and other state subsidies, low or negative operating margins and other funding and competitive challenges. This has resulted in the sale, closure or bankruptcy of many health care facilities and companies.

Our Health Care Practice Group, working closely with the Firm's Creditors' Rights and Reorganization Practice Group, has advised clients with financial challenges, including strategic re-financings, hospital sales and closings, debt restructurings, re-negotiating covenants with stakeholders (e.g., bondholders, banks, bond insurers and equipment financiers), and when necessary, bankruptcy filings.

We also work with banks, private equity firms, hedge funds and other financial institutions in protecting their interests in connection with financings and other investments in health care facilities and businesses. Our in-depth understanding of the health care industry and regulatory environment allows us to advise these clients on unique issues, such as tailoring due diligence reviews, and contractual representations and covenants, so as to provide maximum protection of their interests.

Many of these engagements involve state and federal regulatory issues, such as certificates of need/licensure issues, transfer of provider numbers and Attorney General approvals under both statutory and common law authority. Further, these two groups have also represented other clients who see opportunities in connection with the acquisition of financially distressed health care companies.

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Members of the Sills Cummis & Gross Health Care Practice Group present at many local and national health care industry programs, including seminars sponsored by the New Jersey Hospital

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Association, the American Health Lawyers Association, The Governance Institute, the American Bar Association, the New Jersey State Bar Association, the Healthcare Financial Management Association and the Health Care Compliance Association, among others.

The members of the Group also publish articles in many health care industry publications, such as *Bloomberg Law Reports*, *BoardRoom Press*, *Compliance Today*, *Garden State Focus*, *The Governance Institute's E-Briefings*, *hfm*, *New Jersey Law Journal* and *New Jersey Lawyer*.