



## Kathryn Bucher

Partner



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Kathryn's practice sits 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, and TRICARE). From government contractors of administrative services to managed care organizations with underwriting risks, all navigate complex federal regulations and government oversight.

That complexity is found increasingly in the acquisition and management of pharmacy benefits. Kathryn works with clients on new drug acquisition strategies to reduce drug costs, pulling from her 20 years of experience negotiating agreements between insurers and pharmacy benefit managers (PBMs).

Kathryn also has devoted a significant part of her practice to representing a wide array of Medicare contractors in procurement, regulatory compliance, and litigation matters. Her work includes the unusual combination of both defending False Claims *qui tam* suits and working with clients that team up with the U.S. Department of Justice and the Centers for Medicare & Medicaid Services in the prosecution of Medicare fraud by health care providers and suppliers and PBMs.

This unique practice mix has positioned Kathryn as a recognized thought leader on Medicare contracting and Medicare Secondary Payer (MSP) issues for health care and P&C insurers, including their reporting and related reimbursement obligations to the Medicare Program under Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA). She is the practice leader and

## Practice Areas

Health Care

Government Contracts

Section 111 Insurer Reporting and MSP Reimbursement

Insurance

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

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

## Representative Matters

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- **For Health Care Government Contractors:**

- Routinely counsels Medicare and Federal Employees Health Benefits Program (FEHBP) contractors on federal health care legislation, regulations, agency guidance, and contract obligations.
- As lead counsel, frequently 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, achieving government declination or resolution prior to intervention in two dozen cases.
- Represents Medicare Administrative Contractors (MACs) in their litigation support roles in DOJ fraud investigations and prosecutions of Medicare providers and suppliers.
- Leads internal investigations for compliance officers, general counsel, and company boards.
- Litigates bid protests before the U.S. Government Accountability Office (GAO) and the Court of Federal Claims, including the successful defense of the first MAC award (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; counsels on FAR flow-down clause obligations.
- Advises Medicare contractors on contractor performance issues, suspension and debarment matters, and contractor reporting obligations.
- Assesses cost allowability and allocability issues under the FAR.
- Advises on corporate compliance and records management programs.
- Conducts health care due diligence for mergers and acquisitions.

- **For Health Care and P&C Insurers:**

- Routinely counsels on federal health care policy, legislation, and regulatory initiatives.

- Advises on implications of the U.S. Supreme Court's overturning of the Chevron doctrine in *Loper Bright Enterprises v. Raimondo*.
- Negotiates PBM contracts, including oversight of the contracting process from the development of Requests for Proposals to the evaluation of submitted proposals, the negotiation of contract terms with selected bidders, and finally awardee selection and implementation of award.
- Counsels on related pharmacy benefit issues, including the transition of plan contracts between outgoing and incoming PBMs and related close-out issues, and in 2024, advising one of the nation's largest employers in its assessment of a strategic redirection for drug acquisition, including analysis of alternatives to traditional PBM arrangements to contain rising drug costs – read more [here](#).
- Counsels 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 MSP issues for "Group Health Plans" (GHPs) and "Non-Group Health Plans" (NGHPs) (defined by Section 111 as liability, no-fault, and workers' compensation carriers):
  - Meeting the Mandatory reporting obligations of P&C insurers under Section 111 of MMSEA and the SMART Act amendments;
  - Avoiding Section 111 civil money penalties (CMP) and employing safe harbors;
  - Understanding Section 111 nuisances when settling complex mass and class actions, including identifying the correct Responsible Reporting Entity (RRE), corresponding reportable amount, and report timeliness;
  - Avoiding and, when necessary, satisfying Medicare demands for "Conditional Payment" reimbursement;
  - Unpacking the fiction of the NGHP obligation to pay future medicals;
  - Employing voluntary Medicare set-aside (MSA) arrangements and other structured settlements to mitigate MSP liabilities;
  - Conducting compliance reviews, assessing and making voluntary Section 111 self-disclosures, and designing remediation plans to mitigate MSP liabilities;
  - Defending government audits seeking return of Mistaken Medicare Payments; and
  - Realigning the misfit of Section 111 obligations in professional liability and accident & health insurance settlements.
- **Authors frequently cited Section 111 insights and commentary, including:**
  - "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.

## Affiliations

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

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- 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; Former Chair, Firm Associate Evaluation Committee; Former Vice-Chair, Pro Bono Committee