

## HEALTHCARE



## OVERVIEW

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Foulston Siefkin offers healthcare providers a high level of experience and service. The members of our healthcare practice group are prepared to guide your organization through the tangle of legal requirements associated with an increasingly complex maze of federal and state laws and regulations. Our attorneys have been recognized by national organizations as among the leading healthcare lawyers in the United States.

We have significant experience representing hospitals, ambulatory surgery centers, physician groups, management companies, skilled nursing facilities, behavioral health providers, recovery care centers, home health agencies, durable medical and orthotics suppliers, third-party billing companies, physicians, nurses, and numerous medical groups throughout the regional and nationally. Many of these providers operate multiple facilities across multiple states.

## AREAS OF REPRESENTATION

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The healthcare industry is one of the most regulated sectors of our economy. Hospitals, physician groups, and other healthcare providers must adhere to laws, regulations, and business practices unique to this industry. Foulston Siefkin attorneys work with healthcare providers on a daily basis in these areas of representation:

- Corporate compliance
- Fraud and abuse (Anti-Kickback Statute)
- Stark Law

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- Employment contracts
- Mergers, acquisitions, and joint ventures
- Government investigations
- HIPAA
- Medicaid Home & Community-Based Services
- Medical staff issues
- Litigation
- Medicare & Medicaid reimbursement and appeals (PRRB, ALJ/State)
- Governmental hospital issues
- Open Meetings/Records
- EMTALA
- Regulatory appeals
- Licensure matters
- Physician recruitment
- Negotiations and drafting business contracts
- Risk management
- Managed care issues
- Taxation
- Antitrust
- General business counseling
- Leases
- Policy & procedure review and development

Additionally, healthcare providers face many of the same legal challenges other businesses must address. Our firm's clients draw upon the wealth of knowledge and experience of attorneys practicing in these areas:

- Labor and employment
- Immigration
- Intellectual property
- Commercial litigation
- Tax-exempt organizations
- Real estate
- Employee benefits

## EXPERIENCE

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**Healthcare compliance**

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- Structuring contracts and business relationships to comply with the Anti-Kickback Statute and Stark law.
- Assisting healthcare providers, long-term care providers, and group health plans with the development, revision, and implementation of compliance programs, HIPAA policies and procedures, and Information Blocking policies and procedures.
- Addressing peer review and risk management issues.
- Advising hospitals on EMTALA matters.
- Representing healthcare providers during Office for Civil Rights (OCR) investigations related to HIPAA compliance and Section 1557.
- Advising and assisting healthcare providers and long-term care providers with internal investigations related to HIPAA, data security breaches, Medicare and Medicaid reimbursement, false claims, the Anti-Kickback Statute, and other compliance-related matters.
- Assisting business clients with the development, revision, and implementation of HIPAA policies for employer-sponsored group health plans.
- Assisting healthcare providers with the development of plans of correction (POCs) in response to survey deficiency findings and informal dispute requests.
- Assisting healthcare providers in reviewing billing and reimbursement issues, arranging audits, and determining the necessity and methodology for voluntary self-disclosure to governmental agencies.
- Representing individual healthcare providers in medical staff and peer review matters.
- Advising hospitals on physician recruitment arrangements.
- Implementing Corporate Integrity Agreements for physician practices and other providers following government investigations.
- Advising and assisting hospitals with development and implementation of medical staff bylaws.
- Assisting clients in HIPAA and Stark security-breach investigations and notifications.

### **Provider transactions**

- Completing numerous joint venture arrangements, acquisitions, mergers, and consolidation for hospitals, physician clinics, ambulatory surgery centers, and home health agencies, including multi-facility operations in multiple states.
- Structuring transactions to comply with the Anti-Kickback Statute and Stark law.
- Creating accountable care organizations (ACOs) and other value-based care arrangements.
- Assisting providers with Medicare and Medicaid enrollment, including change of information and change of ownership.
- Assisting providers with licensing and Certification of Need (CONs).

### **Reimbursement and insurance**

- Representing healthcare providers in disputes with insurance companies (both private and governmental payors) including out-of-network, medical necessity, readmissions, and level of care issues.
- Reviewing, negotiating, and preparing managed care contracts and providing advice on managed care issues.

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- Advising and assisting healthcare providers, long-term care providers, and HCBS providers with negotiation of managed care contracts (e.g., KanCare).
- Assisting hospitals, clinics, home-health providers, long-term care facilities, and other provider and supplier types with Medicare and Medicaid enrollment.

### Healthcare litigation and government investigation representation

- Representing institutional and individual healthcare providers in investigations and negotiations with the U.S. Department of Health and Human Services, Office of Inspector General, the U.S. Attorney's Office for the District of Kansas, and the Department of Justice.
- Representing healthcare providers in qui tam (whistleblower) and False Claims Act cases.
- Mediating the termination of agreements that allegedly violate the prohibition on corporate practice of medicine.
- Representing healthcare providers and HCBS providers in administrative proceedings involving Medicaid reimbursement appeals and licensure issues.
- Representing institutional providers before the Provider Review Reimbursement Board.
- Enforcing restrictive covenants.
- Securing dismissal of breach of contract, breach of the duty of good faith and fair dealing, tortious interference with a contract, and tortious interference with a prospective business relationship lawsuit against a medical practice group at the motion to dismiss stage.
- Obtaining dismissal of Racketeer Influenced and Corrupt Organizations ("RICO") claim filed against medical device manufacturer.
- Obtaining dismissal of individual board members from lawsuit challenging the actions taken by the board of a Kansas corporation at the motion to dismiss stage.
- Representing hospital in multi-year Department of Justice ("DOJ") and Health and Human Services ("HHS") meaningful use investigation in which a favorable resolution was secured.
- Representing healthcare providers, long-term care providers, and child-placing agencies in administrative proceedings involving licensure issues.

### Licensing and accreditation

- Handling licensing, accreditation, and certification issues.
- Advising providers on Medicare certification, recertification, and facility licensure.

### RELATED LINKS

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- [Kansas Hospital Association](#)
- [Missouri Hospital Association](#)
- [Centers for Medicare & Medicaid Services](#)
- [American Health Law Association](#)
- [Office of Civil Rights HIPAA website](#)
- [The American Health Information Management Association](#)

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- American Hospital Association
- American Dental Association

### PUBLICATIONS

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#### ISSUE ALERTS

##### 2025

- Texas Federal Court Strikes Down HHS' HIPAA Reproductive Health Rule; Upholds Requirement to Update Notice of Privacy Practices Related to Substance Use Disorder Records

##### 2024

- CMS Updates Hospital Informed Consent Requirements
- Federal Court Rejects Narrow Definition of a 340B-Eligible "Patient" Previously Used by HRSA

##### 2023

- Providers Take Note: CMS Makes Changes to Final Split/Shared Visit Rule for 2024
- OCR Announces the End of COVID-19 Public Health Emergency HIPAA Notifications of Enforcement Discretion
- Healthcare Providers, The End is Near: CMS Issues Guidance for Expiration of COVID-19 Public Health Emergency
- COVID-19 Vaccination Requirements for Federal Employees, Federal Contractors, and CMS-Certified Providers Will End
- Review Health Professional Overtime Policies In Wake of February Supreme Court Ruling

##### 2022

Coronavirus: Supreme Court Green Lights Vaccine Mandate for CMS; Stalls OSHA

##### 2021

Coronavirus: Side Effects From OSHA's Withdrawal of COVID-19 Healthcare ETS

Coronavirus: UPDATE: Court Temporarily Blocks CMS Omnibus COVID-19 Healthcare Staff Vaccination Requirements in Kansas, Missouri, and 8 Other States

Coronavirus: Kansas Gov. Kelly Signs Bill Banning Firing Employees Seeking Waivers From Mandatory Vaccine Requirements

Coronavirus: UPDATE: Fifth Circuit Continues Stay of OSHA ETS for Large Employers

Coronavirus: UPDATE: Court Stays OSHA Emergency Temporary Standard for Large Employers

Coronavirus: CMS Releases Omnibus COVID-19 Healthcare Staff Vaccination Interim Final Rule

Coronavirus: OSHA Releases ETS Requiring Large Employers to Mandate Vaccines or Provide Weekly Testing

Coronavirus: HHS To Issue \$25.5 Billion in COVID-19 Provider Relief Funding

Coronavirus: Biden Administration to Require Vaccination of Nursing Home Staff

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Coronavirus: CMS Eases Nursing Home Visitation Guidelines to Address COVID-19 Vaccinations and Slowing Infections

## 2020

Major Changes to Stark Law and Anti-Kickback Statute Regulations Permit 'Value-Based Arrangements' and Clarify Existing Regulatory Requirements

Coronavirus: Year-End Stimulus Legislation Provides PPP Enhancements and Other COVID-19 Relief

Coronavirus UPDATE: CMS Issues New Nursing Home Visitation Guidelines

Coronavirus: DOL Revises Paid Leave Requirements Under FFCRA

Coronavirus: COVID-19 Response and Reopening for Business Liability Protection

Coronavirus: Kansas Governor Issues Executive Order Suspending Supervision Requirements for Physician Assistants and Nurse Practitioners

Coronavirus: Nursing Homes Required to Report COVID-19 Cases to CDC, Residents, and Resident Representatives

Coronavirus: Some Good News (Finally) – CMS Issues Guidance Aimed at Resuming Non-Emergent Healthcare Services

Coronavirus: State of Missouri Issues Stay-at-Home Order

Coronavirus: Key Healthcare Components of the CARES Act

Coronavirus: CMS, Industry and Professional Groups Issue Guidance Regarding Elective Procedures — Emergent and Urgent Elective Procedures Must Continue

Coronavirus: Kansas Gov. Issues Statewide Stay-At-Home Order

Coronavirus: Key Tax and Business Provisions

Coronavirus: HIPAA Privacy Rules and the COVID-19 Pandemic

Coronavirus: Shawnee County Issues Safer at Home Order

Coronavirus: Sedgwick County Issues Stay-at-Home Order

Coronavirus: Telehealth Requirements Relaxed Amid COVID-19 Public Health Emergency

Coronavirus: Tax and Employee Benefit Considerations

Coronavirus: Stay-at-Home Orders

Coronavirus: Essential Services

Coronavirus: Families First Coronavirus Response Act Becomes Law

Coronavirus: COVID-19 and Business Interruption Insurance

Coronavirus: COVID-19 Guidance for Religious Institutions

Coronavirus: UPDATE CMS Directs Nursing Homes to Restrict Visitation Nationwide

Coronavirus: CMS Orders Significant Monitoring and Restriction of Nursing Home Visitors

Coronavirus: Emergency Preparedness Plans and Operational Guidance for Hospitals and Other Healthcare Facilities in Confronting COVID-19

District Court Strikes Down Office for Civil Rights 2016 HIPAA Right to Access Guidance Application to Third Parties

## 2019

CMS Eases Supervision Requirements for Outpatient Therapeutic Services Provided in Hospitals and Critical Access Hospitals

CMS Eases ASC Regulations Concerning Patient Transfers, Examinations, and Emergency Preparedness Planning

MO HealthNet OPRA Provider NPI and Enrollment Requirements: Warning Phase Ends November 1, 2019

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New DOJ Guidance Takes a Closer Look at Corporate Compliance Programs and Incentivizes Cooperation in False Claims Act Violations

Kansas Supreme Court Ruling Uncaps Damages for "Pain and Suffering"

New "Stop Human Trafficking" Poster Requirements in Missouri

## 2018

CARE Act Requires Policy Review and Action From Kansas Hospitals Effective July 1

HHS Issues Request for Information Seeking Input on HIPAA Improvements

CMS Says Don't Text Patient Orders

## 2017

And the Hits Keep Coming: CMS Proposes to Cut Reimbursement Rates for 340B Drugs and Non-Excepted Provider-Based Department Services

Is Your Emergency Preparedness Plan Consistent with CMS Standards?

## 2016

CMS Clarifies Off-Campus Provider-Based Billing Prohibition

New HIPAA Guidance Removes Roadblocks to Patient Access: But at What Cost to Providers?

CMS Issues Final 60-Day Overpayments Rule: It's All About A Provider's Risk Tolerance

## 2015

CMS Clarifies "Incident-To" Billing Rules: Billing Physician Must Supervise Incident-To Services

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