

Health MVP: Akin Gump's Christopher Keough

By Jeff Overley

Law360, New York (December 6, 2016, 1:15 PM EST) -- Akin Gump Strauss Hauer & Feld LLP partner Christopher L. Keough has won back hundreds of millions of dollars for hospitals by deftly navigating the byzantine realm of Medicare reimbursement, placing him among Law360's Health MVPs of 2016.

Keough, who is based in Washington, D.C., has led successful charges recently against some of Medicare's most controversial reimbursement policies, including a rate cut tied to the program's "two-midnight rule" on inpatient admissions and the calculation of so-called disproportionate share hospital payments.

The triumphs add to many other victories notched over the course of a 25-year career in the Medicare reimbursement space. The past five years have been at Akin Gump and were preceded by stints at King & Spalding LLP, Vinson & Elkins LLP and Powers Pyles Sutter & Verville PC.

In an interview, Keough chalked up his success to a combination of rigorous attention to detail, an aptitude for pondering the notoriously impenetrable Medicare Act and a commitment to specialization.

"To be successful, you've really got to be able to dot your I's and cross your T's, and really think through things and think through them deeply," Keough said. "And that's really what we've been doing for many years is trying to focus our attention on this one area — not try to be all things to all people."

One of the biggest successes in recent memory involved the two-midnight rule, which said that inpatient admissions generally must cross at least two midnights to be properly billed to Medicare. When regulators enacted the rule, they predicted that admissions would subsequently increase, and so they cut \$220 million in annual hospital reimbursements to offset the cost.

Keough was a lead lawyer for hospitals in ensuing litigation, and he scored one win in late 2015 when a D.C. federal judge agreed that the Centers for Medicare and Medicaid Services took improper shortcuts in the rule-making process.



“The agency had failed to explain well enough the critical assumptions and data underlying its estimates in a manner that would afford interested parties — especially, in this case, hospitals — the opportunity to meaningfully comment,” Keough said.

In early 2016, Keough notched an even bigger victory when CMS acknowledged that the projected increase in admissions hadn't materialized and agreed to refund several years' worth of payment cuts. Although the pay cut wasn't tremendous in and of itself — it amounted to 0.2 percent of total inpatient pay — hospitals viewed it as important in light of other belt-tightening.

“From the vantage point of the hospitals ... every penny counts, especially these days in the aftermath of various rate reductions,” Keough said.

Elsewhere, Keough this year secured a confidential settlement on behalf of 430 hospitals challenging the calculation of so-called disproportionate share hospital payments, known as DSH payments. The deal resolved payment disputes going back more than 10 years and turned on various disagreements about whether patients were “entitled to benefits” in traditional Medicare. That's important because DSH payments hinge on the ratio of a hospital's low-income patients to its total population of patients entitled to benefits.

The victories, Keough said, are rooted in the willingness of hospitals to invest in arduous legal challenges that often take many years and usually require attorneys to convince courts that deference to regulators isn't warranted.

“It begins and ends with the clients and the hospitals,” Keough said. “It's having clients and hospitals that are willing to place their trust and confidence in us to handle a matter.”

--Editing by Jack Karp.