

Health Group Of The Year: Akin Gump

By **Carolina Bolado**

Law360, Miami (January 27, 2017, 8:06 PM EST) -- For its work representing hundreds of hospitals in a successful challenge to a rule reducing the Medicare payment rate for inpatient services, among other cases, Akin Gump Strauss Hauer & Feld LLP's health team has landed a spot among Law360's Practice Groups of the Year.

The firm was the first to file a national lead case challenging the adoption of the so-called "two midnight" rule that reduced the Medicare payment rate for inpatient services by 0.2 percent.

In September 2015, the D.C. federal court said the rules were arbitrary and capricious, a decision that led to the federal government one year later determining to undo the rate reduction and repay hospitals for the underpayments. The impact is \$220 million per year.

The case, *Shands Jacksonville Medical Center v. Burwell*, was a logistical challenge, according to Akin Gump partner Christopher Keough. The percentage rate cut was very small, so it was not cost-effective for an institution to bring suit by itself. But he said the firm used its many contacts with institutions around the country to put together a group of 420 hospitals.

And though others later filed their own challenges to the reimbursement rule, Akin Gump was the first to court thanks to the health group's constant vigilance about new rules and regulations.

"Part of the value we hope to bring to clients is not just responding to questions but trying to efficiently bring them notice of problems that may be lurking or opportunities that may exist. I think that's something clients greatly appreciate," Keough said.

Akin Gump's 107-attorney health group, which is nearly 40 years old, represents hospitals and manufacturers in a number of matters such as regulatory compliance, fraud and abuse defense, legislative advocacy and transactional work. But the group's bread and butter is Medicare and Medicaid reimbursement litigation.

"The reason we've been able to maintain the practice for that long is based on the strength of our reimbursement litigation practice, on which the section was founded," partner John Jacob said.



In addition to their litigation experience, Akin Gump's group has a number of health policy experts that bring government know-how to the table.

"We bring not only the force of litigation but also experience and access," Jacob said. "The combined litigation and policy expertise is the market differentiator."

In addition to the Shands case, the firm successfully challenged the Centers for Medicare & Medicaid Services' determination that Akin Gump client Clarian Health Partners Inc. had to repay more than \$2 million in Medicare "outlier payments" for services to patients in 2007. The firm secured a favorable ruling in August that held CMS violated notice-and-comment rulemaking procedures.

In another case before the Provider Reimbursement Review Board, the firm represented HCA-HealthOne LLC in an attempt to recoup Medicare payments due to hospitals in Colorado that treat a disproportionate share of low-income patients. The hospitals first have to verify Medicaid eligibility and then consider that when calculating Medicare payments, but because of the problems with the state's eligibility system, many Medicaid-eligible patients were listed as "inactive" in the state's database.

In September, the PRRB ruled that all of the "inactive" patient days had to be counted as Medicaid patient days in the revised calculations of payments due to the hospitals, which total about \$40 million for the hospitals involved.

The firm currently has several other appeals before the PRRB representing more than 900 hospitals in challenges involving \$3.4 billion.

"There's still work to be done, but we're incredibly proud of the work we've done both on the litigation side and the policy side to protect payments owed to our hospital clients," Jacob said.

--Editing by Mark Lebetkin.